Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-38

UNITED STATES OF AMERICA,

Appellant,

—v.—

MARINE BANCORPORATION, THE NATIONAL BANK OF COMMERCE OF SEATTLE, WASHINGTON TRUST BANK, AND JAMES E. SMITH, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

INDEX

	Page
Docket Entries	1
Complaint by the United States filed October 22, 1971	9
Defendants' Answer to the Complaint filed November 22, 1971	17
Intervenor's Answer to the Complaint filed December 8, 1971	24
Defendants' Answers to Plaintiff's Interrogatories:	
No. 5(A)(2), (3)	30
No. 9b	44
No. 23	53
No. 30	60
No. 33	75
No. 34	80
No. 40	84
No. 48	87
No. 53	89

	Page
Plaintiff's Answers to Intervenor's Interrogatories (Set. No. 1):	
No. 14	91
No. 15	91
No. 16	92
No. 17	92
Deposition of Robert F. Buck taken August 16, 1972	93
Buck Deposition Exhibit 1*	1514
Buck Deposition Exhibit 2*	1516
Buck Deposition Exhibit 3*	1576
Buck Deposition Exhibit 4*	1407
Buck Deposition Exhibit 5	132
Buck Deposition Exhibit 6*	1358
Buck Deposition Exhibit 7	136
Deposition of Maxwell Carlson taken August 16, 1972	137
Carlson Deposition Exhibit 1	152
Carlson Deposition Exhibit 2*	1273
Carlson Deposition Exhibit 3	154
Deposition of Ralph J. Stowell taken August 16, 1972	157
Stowell Deposition Exhibit 1*	1432
Stowell Deposition Exhibit 2*	1433
Stowell Deposition Exhibit 3*	1393
Stowell Deposition Exhibit 4*	1284
Deposition of Frank A. Abersfeller taken August 17, 1972	195
Abersfeller Deposition Exhibit 1	236
Abersfeller Deposition Exhibit 2*	1391
Abersfeller Deposition Exhibit 3	239
Abersfeller Deposition Exhibit 4	240
Abersfeller Deposition Exhibit 5*	1279
Deposition of Andrew Price, Jr. taken August 17, 1972	242
Price Deposition Exhibit 1-1*	1430
Price Deposition Exhibit 1-2*	1429
Price Deposition Exhibit 1-3*	1428
Price Deposition Exhibit 1-4*	1427
Price Deposition Exhibit 1-5*	1426
Price Deposition Exhibit 1-6*	1425
Price Deposition Exhibit 1-7*	1424
Price Deposition Exhibit 1-8*	1423
Price Deposition Exhibit 1-9*	1422
Price Deposition Exhibit 1-10*	1421
Price Deposition Exhibit 1-11*	1420

* Deposition Exhibits which correspond to Government Exhibits are reproduced in the category of Government Exhibits.

Page

Deposition of Andrew Price, Jr. taken August 17, 1972—Continued
Price Deposition Exhibit 1-12* 1419
Price Deposition Exhibit 1-13* 1418
Price Deposition Exhibit 1-14* 1417
Price Deposition Exhibit 1-15* 1416
Price Deposition Exhibit 1-16* 1415
Price Deposition Exhibit 1-17* 1414
Price Deposition Exhibit 1-18 327
Price Deposition Exhibit 1-19* 1413
Price Deposition Exhibit 1-20* 1412
Price Deposition Exhibit 1-21* 1411
Price Deposition Exhibit 1-22* 1410
Price Deposition Exhibit 1-23* 1409
Price Deposition Exhibit 1-24* 1406
Price Deposition Exhibit 1-25* 1404
Price Deposition Exhibit 1-26* 1403
Price Deposition Exhibit 1-27* 1402
Price Deposition Exhibit 1-28* 1401
Price Deposition Exhibit 1-29* 1400
Price Deposition Exhibit 1-30* 1399
Price Deposition Exhibit 1-31* 1398
Price Deposition Exhibit 1-32* 1397
Price Deposition Exhibit 1-33* 1396
Price Deposition Exhibit 1-34* 1395
Price Deposition Exhibit 1-35* 1393
Price Deposition Exhibit 1-36* 1394
Price Deposition Exhibit 1-37* 1392
Price Deposition Exhibit 1-38* 1391
Price Deposition Exhibit 1-39* 1389
Price Deposition Exhibit 1-40* 1390
Price Deposition Exhibit 2* 1433
Price Deposition Exhibit 3* 1432
Price Deposition Exhibit 4* 1593
Price Deposition Exhibit 5* 1650
Price Deposition Exhibit 6* 1514
Price Deposition Exhibit 7* 1573
Price Deposition Exhibit 8 329
Price Deposition Exhibit 9* 1356
Price Deposition Exhibit 10* 1358
Price Deposition Exhibit 11* 1357

Deposition of Dean W. Loney taken August 18, 1972 331
Loney Deposition Exhibit 1* 1514
Loney Deposition Exhibit 2* 1573

Pretrial Order and attached Exhibits A through H, filed January 8, 1973 364

* Deposition Exhibits which correspond to Government Exhibits are reproduced in the category of Government Exhibits.

Page

Transcript of proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 8, 1973:
Appearances 446
Transcript of the proceedings 447
Testimony of Robert E. Smith
—direct—[50] 473
—voir dire—[57] 477
—further direct—[61] 479

Transcript of proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 9, 1973:
Appearances 510
Testimony of Robert E. Smith (resumed)
—direct—[117] 511
—cross—[158] 533
—redirect—[183] 549
Testimony of Warren P. Cooley
—direct—[193] 555
—cross—[209] 564
Testimony of Michael Marston
—direct—[215] 568
—cross—[264] 596

Transcript of proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 10, 1973:
Appearances 602
Testimony of Charles F. Haywood
—direct—[329] 633
—cross—[378] 661
Testimony of Lloyd C. Billings
—direct—[425] 688
—cross—[444] 699
Testimony of Maxwell Carlson
—direct—[459] 708

Transcript of proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 11, 1973:
Appearances 720
Testimony of Joseph C. MacMurray
—direct—[485] 724
—cross—[555] 764
—redirect—[574] 776

Page

Transcript of proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 11, 1973:—Continued

Testimony of Richard G. Bennett
—direct—[622] 804
—cross—[633] 810
—redirect——[645] 818

Transcript of proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 12, 1973:

Appearances 820

Testimony of Betty Bruckner
—direct—[654] 822
—cross—[656] 824
—redirect—[662] 828

Testimony of William F. Barrett
—direct—[663] 828
—cross—[672] 834

Testimony of Leroy Johnson
—direct—[684] 841
—cross—[687] 843

Testimony of Maxwell Carlson (resumed)
—direct—[692] 846
—cross—[715] 860
—redirect—[749] 881

Transcript of proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 15, 1973:

Appearances 883

Testimony of Raymond A. Hanson
—direct—[756] 884
—cross—[761] 887
—redirect—[773] 893

Testimony of Neil Degerstrom
—direct—[774] 894
—cross—[779] 897

Testimony of E.D. McCarthy
—direct—[780] 897
—cross—[785] 900
—redirect—[788] 902

Testimony of Arden Jacklin
—direct—[789] 903
—cross—[793] 905
—redirect—[797] 908

Testimony of R. Neil Williams
—direct—[798] 908
—cross—[802] 911

Page

Transcript of proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 15, 1973:—Continued

Testimony of Leonard Maxey
—direct—[803] 912
—cross—[805] 913
—redirect—[807] 914
Testimony of Merton L. Howard
—direct—[808] 915
—cross—[811] 917
Testimony of Philip H. Stanton
—direct—[814] 918
—cross—[846] 937
—redirect—[861] 945
Testimony of T. Robert Faragher
—direct—[867] 948
—cross—[911] 974

Transcript of proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 16, 1973:
Appearances 1007
Testimony of H. Joe Selby
—direct—[969] 1008
—cross—[979] 1013
—redirect—[1018] 1036
Testimony of Nevins D. Baxter
—direct—[1031] 1043
—cross—[1066] 1063
Testimony of Robert K. Hurni
—direct—[1132] 1102

Transcript of procedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 17, 1973:
Appearances 1115
Transcript of the proceedings 1116

Government Exhibits:
GX A-1 1148
GX A-2 1149
GX A-3 1150
GX A-4 1152
GX A-5 1153
GX A-6 1154
GX A-7 1155
GX A-8 1156

	Page
GX A-9	1157
GX A-10	1158
GX A-11	1159
GX A-12	1160
GX A-13	1161
GX A-14	1162
GX A-15	1163
GX A-16	1164
GX A-17	1165
GX A-18	1166
GX A-19	1167
GX A-20	1168
GX A-21	1169
GX A-22	1170
GX A-23	1173
GX A-24	1177
GX A-25	1181
GX A-26	1185
GX A-27	1186
GX A-28	1187
GX A-29	1188
GX A-30	1189
GX A-31	1191
GX A-32	1193
GX A-33	1194
GX A-34	1195
GX A-35	1197
GX A-36	1199
GX A-37	1200
GX A-38	1201
GX A-39	1202
GX A-40	1203
GX A-41	1204
GX A-42	1207
GX A-43	1208
GX A-44	1209
GX A-45	1210
GX A-46	1211
GX A-47	1212
GX A-48	1213
GX A-49	1214
GX A-50	1215
GX A-51	1216
GX A-52	1217
GX A-53	1218
GX A-54	1219
GX A-55	1220
GX A-56	1221
GX A-57	1222

	Page
GX A-58	1223
GX A-59	1224
GX A-60	1225
GX A-61	1226
GX A-62	1227
GX A-63	1228
GX A-64	1229
GX A-65	1230
GX A-66	1231
GX A-67	1232
GX A-68	1233
GX A-69	1234
GX A-70	1235
GX A-71	1236
GX B-1	1237
GX B-2	1238
GX B-3	1239
GX B-4	1240
GX C	1242
GX D-1	1265
GX D-2	1266
GX D-3	1267
GX D-4	1268
GX D-5	1269
GX D-6	1270
GX F-1	1272
GX F-2	1272
GX F-23	1273
GX F-25	1274
GX F-26	1275
GX F-27	1276
GX F-29	1277
GX F-31	1278
GX G-1	1279
GX G-2	1280
GX G-3	1281
GX G-8	1282
GX G-9	1284
GX H-1	1288
GX H-2	1291
GX H-3	1293
GX H-4	1296
GX H-5	1301
GX H-6	1305
GX H-7	1310
GX H-8	1315
GX H-9	1317
GX H-10	1322
GX H-11	1326
GX H-12	1329

Page

GX H-13 1333
GX H-14 1336
GX H-15 1341
GX I-1-a 1346
GX I-1-b 1347
GX I-1-c 1348
GX I-2 1349
GX I-3 1350
GX I-4-a 1353
GX I-4-b 1354
GX I 4-c 1355
GX I-4-d 1356
GX I-4-e 1357
GX I-5 1358
GX I-6-a 1362
GX I-6-b 1363
GX I-7 1364
GX I-8-a 1365
GX I-8-b 1366
GX I-9-a 1367
GX I-9-b 1368
GX I-10-a 1370
GX I-10-b 1371
GX I-11-a 1372
GX I-11-b 1373
GX I-11-c 1374
GX I-11-d 1375
GX I-11-e 1376
GX I-11-f 1377
GX-J-1 1378
GX J-2 1379
GX J-3 1380
GX J-4 1381
GX J-5 1382
GX J-7 1383
GX J-8 1384
GX J-9 1385
GX J-10 1386
GX J-11 1387
GX J-12 1388
GX J-13 1389
GX J-14 1390
GX J-15 1391
GX J-16 1392
GX J-17 1393
GX J-18 1394
GX J-19 1395
GX J-20 1396
GX J-21 1397
GX J-22 1398

	Page
GX J-23	1399
GX J-24	1400
GX J-25	1401
GX J-26	1402
GX J-27	1403
GX J-28	1404
GX J-29	1405
GX J-30	1406
GX J-31	1407
GX J-32	1408
GX J-33	1409
GX J-34	1410
GX J-35	1411
GX J-36	1412
GX J-37	1413
GX J-38	1414
GX J-39	1415
GX J-40	1416
GX J-41	1417
GX J-42	1418
GX J-43	1419
GX J-44	1420
GX J-45	1421
GX J-46	1422
GX J-47	1423
GX J-48	1424
GX J-49	1425
GX J-50	1426
GX J-51	1427
GX J-52	1428
GX J-53	1429
GX J-54	1430
GX K-1	1431
GX K-2	1432
GX K-3	1433
GX K-4	1435
GX K-5	1436
GX K-6	1438
GX K-7-a	1440
GX K-7-b	1441
GX K-7-c	1442
GX K-8	1443
GX K-9	1444
GX K-10	1445
GX K-11-a	1446
GX K-11-b	1447
GX K-12	1448
GX K-13	1452
GX K-14	1454

	Page
GX K-15	1455
GX K-16	1456
GX K-17	1457
GX K-18-a	1458
GX K-18-b	1459
GX K-19	1460
GX K-20	1461
GX K-21	1462
GX K-22	1463
GX K-23	1464
GX K-24	1465
GX K-25	1466
GX K-26-a	1467
GX K-26-b	1468
GX K-26-c	1469
GX K-26-d	1470
GX K-27-a	1471
GX K-27-b	1472
GX K-28	1473
GX K-29-a	1475
GX K-29-b	1476
GX K-30-a	1478
GX K-30-b	1479
GX K-30-c	1481
GX K-31	1483
GX K-32	1484
GX K-33-a	1485
GX K-33-b	1488
GX K-33-c	1490
GX K-34-a	1491
GX K-34-b	1492
GX K-35	1493
GX K-36	1514
GX K-37	1516
GX K-38	1518
GX K-39	1519
GX K-40	1520
GX K-41	1521
GX K-42-a	1522
GX K-42-b	1523
GX K-43-a	1524
GX K-43-b	1525
GX K-44	1526
GX K-45	1527
GX K-46-a	1528
GX K-46-b	1529
GX K-47	1530
GX K-48-a	1532

	Page
GX K-48-b	1533
GX K-49-a	1534
GX K-49-b	1535
GX K-50	1536
GX K-51-a	1537
GX K-51-b	1538
GX K-51-c	1539
GX K-51-d	1541
GX K-52	1542
GX K-53-a	1543
GX K-53-b	1544
GX K-54-a	1545
GX K-54-b	1546
GX K-55-a	1547
GX K-55-b	1548
GX K-55-c	1549
GX K-56	1551
GX K-57-a	1552
GX K-57-b	1553
GX K-58	1554
GX K-59	1555
GX K-60	1557
GX K-61	1558
GX K-62	1560
GX K-63	1562
GX K-64	1563
GX K-65	1564
GX K-66	1566
GX K-67	1568
GX K-68	1569
GX K-69	1570
GX K-70	1573
GX K-71	1576
GX K-72-a	1579
GX K-72-b	1591
GX K-72-b-1	1592
GX K-73	1593
GX K-74-a	1607
GX K-74-b	1608
GX K-74-c	1612
GX K-75	1613
GX K-76	1615
GX K-77	1616
GX K-78	1617
GX K-79-a	1618
GX K-79-b	1634
GX K-79-c	1650
GX K-80	1666

	Page
GX K-81	1667
GX K-82	1668
GX K-83	1669
GX K-84-a	1678
GX K-84-b	1679
GX K-85-a	1680
GX K-85-b	1681
GX K-85-c	1682
GX K-86	1683
GX K-87-a	1684
GX K-87-b	1685
GX K-88	1686
GX K-89	1688
GX K-90	1690
GX K-91	1691
GX K-92	1692
GX K-93	1694
GX K-94	1695
GX L-1	1697
GX L-2	1747
GX M-1	1753
GX M-2	1758
GX N	1769
GX O-1	1820
GX O-2	1821
GX O-3	1822
GX O-4	1823
GX O-5	1824
GX O-6	1825
GX O-7	1826
GX O-8	1827
GX O-9	1828
GX O-11	1829
GX O-19	1830
GX O-20	1831

Defense Exhibits:

DX 1	1832
DX 2	1833
DX 3	1834
DX 4	1835
DX 5	1836
DX 6	1837
DX 7	1838
DX 9	1839
DX 10*	1840
DX 11	1841

* Colors are not shown on this map in the Appendix. They are shown on the map in the record certified to this Court.

	Page
DX 12	1842
DX 13	1844
DX 14	1845
DX 15	1847
DX 16	1849
DX 17	1851
DX 18	1852
DX 19	1855
DX 20	1856
DX 21	1857
DX 22	1858
DX 23	1859
DX 24	1861
DX 25	1862
DX 26	1863
DX 27	1864
DX 28	1865
DX 29	1866
DX 30	1867
DX 31	1868
DX 32	1870
DX 33	1871
DX 34	1873
DX 35	1875
DX 36	1877
DX 37	1879
DX 38	1881
DX 39	1883
DX 40	1891
DX 41	1899
DX 42	1900
DX 43	1901
DX 44	1902
DX 45	1904
DX 46	1905
DX 47	1908
DX 48	1911
DX 49	1912
DX 50	1913
DX 51	1914
DX 52	1915
Intervenor's Exhibits:	
Exhibit L to Intervenor's Exhibit 500	1916
Exhibit (1) to Intervenor's Exhibit 500	1918
Transcript of Proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on January 31, 1973 at Tacoma, Washington	1920

Page

Findings of Fact and Conclusions of Law filed January 31, 1973 1932

Transcript of Proceedings held before the Hon. William N. Goodwin, United States District Judge for the Western District of Washington, on February 22, 1973 at Las Vegas, Nevada 1953

Notice of Appeal to the Supreme Court by the United States dated March 30, 1973 1970

Order of the Supreme Court noting probable jurisdiction, dated October 15, 1973 1973

DOCKET ENTRIES

Date	
10/22/71	Filed complaint.
10/22/71	Issued summons.
10/29/71	Filed Marshal's Return on summons, Wash. Trust Bank.
11/ 3/71	Filed Appearance of Graham, McCord, Dunn, Moen, Johnston & Rosenquist for all defendants.
11/21/71	Filed Defendants' Answer.
12/ 8/71	Filed Motion of William B. Camp, Comptroller of the Currency, to intervene as a party and Notice.
12/ 8/71	Filed Order granting motion of Comptroller to intervene.
12/ 8/71	Filed Intervenor's William B. Camp, Answer to Plaintiff's complaint.
12/10/71	Filed Defendants' Notice anti-trust action.
12/10/71	Filed PRETRIAL ORDER. Counsel to report to court March 31, 1972, 10:00 A.M. regarding progress in preparation of trial with view to estabishment of trial date.
1/ 6/72	Filed Interrogs. to Defts.
1/17/72	Filed Pltf's request for production of documents.
2/ 3/72	Filed Defts' Interr. to Pltf. (First Group).
2/ 3/72	Filed Order for Protection of parties during discovery proceedings—counsel advised by card.
2/28/72	Filed Pltf's request for production of documents to Intervenor.
2/29/72	Filed Intervenor's Interrogs. to Pltf. (Set #1). Filed Certificate of service.
3/13/72	Filed Defendants' Answers to Pltf's Interrogs. (2 Vol.) (Confidential—in vault in Drawer #10).

Date	
8/15/72	Filed Proof of service of Answers to Pltf's Interrogs.
6/ 2/72	Filed Pltf's answer to Intervenor's Interrogs., Set #1.
8/ 2/72	Filed Pltf's Answers to Defts' Interrogs.
8/15/72	Filed Notice of Taking Depositions of Ralph J. Stowell, Robert F. Buck, Maxwell Carlson, Frank A. Abersfeller, Andrew Price, Jr., T. Robert Faragher, Philip H. Stanton, W. E. McLaughlin, and Dean W. Loney.
8/15/72	Filed Praecipe of 8 deposition subpoenas, in blank—issued by Clerk, Seattle.
	Filed Marshal's Ret. on Dep of Subp. (W. D. McLaughlin, Philip H. Stanton).
8/17/72	Filed Interrogatories to the Intervenor by plaintiff.
8/17/72	Filed U.S. Marshal's return on Carlson, Stowell, Buck, & Price, Jr.
8/18/72	Filed U.S. Marshal's return on Subpoena to Dean W. Loney.
8/21/72	Filed U.S. Marshal's return on Faragher.
8/21/72	Filed U.S. Marshal's return on Abersfeller.
9/ 5/72	Filed Praecipe for subp. (7) in blank—issued to Mr. Stephan in Seattle.
	Filed Notice of taking Depos. of Sea. 1st Nat Bk & Pac. Nat Bk, Old Nat Bk of Spokane American Comm. Bank, Spokane and Farmers Merchants Bank.
	Filed Notice of taking Depo of Wm. W. Witherspoon, E. C. Underhill.
9/ 7/72	Filed Marshal's Ret. on Dept. Subp. (Pac. Nat. Bk. of Wash.).

Date	
9/11/72	Filed Deposition of Andrew Price, Jr. on behalf of Pltf.
	Filed Deposition of Frank A. Abersfeller on behalf of Pltf.
	Filed Deposition of Ralph J. Stowell on behalf of Pltf.
	Filed Deposition of Robert Faragher on behalf of Ptlf.
	Filed Deposition of W. D. McLaughlin on behalf of Pltf.
	Filed Deposition of Maxwell Carlson on behalf of Pltf.
	Filed Deposition of Philip H. Stanton on behalf of Pltf.
	Filed Deposition of Dean W. Loney on behalf of Pltf.
	Filed Deposition of Robert F. Buck on behalf of Pltf.
9/13/72	Filed Deposition of W. W. Witherspoon.
9/13/72	Filed Marshal's Ret. on Subp. (William W. Witherspoon, First Nat'l Bk of Spokane, American Commercial Bank, Old National Bank).
9/18/72	SET FOR TRIAL *MONDAY, JANUARY 8, 1973 at 9:30*—ALL NOTIFIED.
9/25/72	Filed Notice of taking Deposition of William M. Crozier.
9/27/72	Filed Pltf's request for production of documents (2nd).
10/ 6/72	Filed Deposition of E. C. Underhill on behalf of Pltf.
10/13/72	Filed Praecipe for 45 subp. in blank—issued by Clerk, Seattle.
10/30/72	Filed INTERVENOR'S ANSWERS TO PLAINTIFFS' INTERROGATORIES.

Date	
10/30/72	Filed Certificate of Service by Mail.
11/ 2/72	Filed Intervenor's request to plaintiff for the production of documents.
11/ 2/72	Filed Interrogatories to Plaintiff (Set No. 2).
11/ 2/72	Filed Certificate of Service.
11/16/72	Filed Defendants' pretrial statement.
11/16/72	Filed Defendants' memorandum on objections to plaintiffs' pretrial statement.
11/16/72	Filed Certificate of Service.
11/22/72	Filed Pltf's Motion for Order to compel Intervenor to produce documents. Filed Notice of hearing motion on *Friday, 12/1/72.* Filed Certificate of compliance.
11/27/72	Filed Intervenor's pretrial Statement. Filed Certificate of service of Statement.
12/ 4/72	Filed Amended Notice of Motion for *FRIDAY, DECEMBER 8, 1972* at 9:30 A.M.
12/ 7/72	Filed Intervenor's Memorandum In Opposition to Plaintiff's Motion to Compel Discovery. Exhibits Enclosed.
12/ 7/72	Filed Certificate of Service of Intervenor's Memorandum.
12/ 7/72	Filed Pltf's Answers to Intervenor's 2nd set of Interrogs.
12/ 8/72	Ent. record hear. Pltf's Motion for Order to compel Intervenor to produce documents had. Mr. Torre, Mr. Revere, Mr. McClellan & Mr. Hopkins admitted for this case. Mr. Torre moves that if motion not granted, Court review requested documents in Camera. Matter under advisement.

Date	
12/11/72	Filed Plaintiff's Request for Admissions.
12/12/72	Filed & Ent. Order denying Motion of Pltf. to produce material. Copy to Counsel.
12/20/72	Filed amendment to Pltf's Answers to Defts' Interrogs.
12/29/72	Filed Praecipe to issue Civil Subpoena to Mr. Joseph C. McMurray—Issued to U.S. Marshal.
12/29/72	Filed Motion for Order Shortening time within which pltf. is required to respond to deft's request for admission.
12/29/72	Filed Notice of Motion Noted for *FRIDAY, JANUARY 5, 1973* at 9:30 A.M.
12/29/72	Filed Deft's Pretrial Memorandum of points & authorities.
12/29/72	Filed Deft's request for admission.
1/ 4/73	Filed Pltf's Pre-trial Statement. Copy to Court.
1/ 6/73	Filed Pltf's Pretrial Brief. Copy to Court.
1/ 8/73	Filed Pltf's Response to Defts' Request for admission. Copy to Court.
	Filed Intervenor's Pretrial Memorandum.
	Filed Certificate of service by mail of Memorandum.
1/ 8/73	Filed Praecipe to issue four subpoenas in blank. ISSUED 1-8-73.
1/ 8/73	Ent. record trial commenced to Court.
1/ 9/73	Ent. record trial resumed.
1/10/73	Ent. record trial resumed.
1/11/73	Ent. record trial resumed.
1/12/73	Ent. record trial resumed.
1/15/73	Filed Marshal's return of Subpoena (Joseph C. McMurray).

Date	
1/15/73	Filed Praecipe for subp. (Robert Hurni). Filed Ret. on Subp. (Hurni).
1/15/73	Ent. record trial resumed.
1/16/73	Ent. record trial resumed.
1/17/73	Ent. record trial resumed. Court finds for Deft. & Intervenor. Formal Findings Concl. & Jdmt to be filed. Mot. to dissolve Injunct. heard. Court grants 30 day stay of dissolution of Injunct.
1/26/73	Filed Defts' Notice of Presentation of Findings of Fact and Conclusions of Law and Judgment and Decree on 1/31/73 at 9:30 a.m.
1/30/73	Lodged Intervenor's proposed Findings of Fact and Concl. of law.
1/31/73	Hearng had on Findings, Concl. & Jdmt. Objns thereto argued by Pltf. Filed & Ent. Findings of Fact and Concl. of law. Filed & Ent Jdmt and Decree: That consummation of proposed merger of Washington Trust Bank into National Bank of Commerce of Seattle does not violate Sec. 7 of Clayton Act; Order enjoining sd merger denied with prejudice; automatic injunct. imposed by filing Action is dissolved, effective 30 days after entry of Jdmt and Decree; Jdmt in favor of Defts. and Intervenor for costs hereafter to be taxed; Action dismissed with prejudice. Filed Notice of presentation of Defts' Cost Bill. Filed Defts' Cost Bill in amt of $5817.92. Clerk directed NOT to tax costs until results of Appeal are concluded.
1/31/73	Exhibits on file in Tacoma Office.
2/12/73	Filed Plaintiff's motion for additional findings, Memorandum and Notice of motion; March 9, 1973.

Date	
2/16/73	Filed defendants' memorandum in opposition to plaintiff's motion for additional findings.
2/22/73	Filed Intervenor's memorandum in opposition to motion for additional findings, & Cert of Service.
2/22/73	Filed and ent order denying plaintiff's motion for additional findings and extending stay to March 15, 1973.
3/14/73	Filed Stipulation and Order staying merger until Mar 24, 1973.
3/23/73	Filed Order Extending Stay to April 6, 1973 at 6:00 p.m.
3/30/73	Filed USA's notice of appeal.

FILED IN THE
UNITED STATES DISTRICT COURT
Western District of Washington
OCT 22 1971
CHARLES R. SCHWEI, Clerk
By _____, Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE; and WASHINGTON TRUST BANK,

Defendants.

Civil Action No.

Filed: 237-71C2

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 38 Stat. 731, as amended (15 U.S.C. § 18).

2. Marine Bancorporation and The National Bank of Commerce of Seattle have their principal places of business, transact business, and are found within the Western District of Washington.

II

THE DEFENDANTS

3. Marine Bancorporation (hereinafter referred to as "Marine") is made a defendant herein. Marine is a corporation organized under the laws of the State of Washington which owns

all of the capital stock of The National Bank of Commerce of Seattle except for the qualifying shares owned by the bank's directors. Marine maintains its principal place of business in Seattle, King County, Washington.

4. The National Bank of Commerce of Seattle (hereinafter referred to as "NBC") is made a defendant herein. NBC is a banking association organized under the laws of the United States of America and maintains its principal place of business in Seattle, King County, Washington.

5. Washington Trust Bank (hereinafter referred to as "WTB") is made a defendant herein. WTB is a banking association organized under the laws of the State of Washington and maintains its principal place of business in Spokane, Spokane County, Washington.

III

TRADE AND COMMERCE

6. Commercial banks fill an essential and unique role in the nation's economy. Their principal functions are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn against demand deposits, and the creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrators of the nation's check payment system. Through the making of loans to individuals and businesses, commercial banks supply a significant part of the credit requirements of the nation's economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of drafts, bills and other commercial instruments, the acceptance of bills of exchange, the issuance of letters of credit, the sale of cashier's checks

and drafts on correspondent banks, the purchase or sale of securities for customers, the sale of foreign exchange, and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

7. Customers of Marine's subsidiary bank, NBC, and of WTB have regularly utilized interstate communications, including the mails, telephone and telegraph, to carry on their business with, apply for and obtain the services provided by these banks. Marine's subsidiary, NBC, and WTB have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct business with customers and with other banks located in states other than Washington. Marine, NBC and WTB are engaged in interstate commerce.

8. NBC is the second largest commercial bank in Washington. It operates more than 100 banking offices in the state, including 29 in Seattle, as well as two in Spokane County outside of the Spokane metropolitan area, and it has offices in most of the counties of eastern Washington. On December 31, 1970, NBC had total assets of about $1.3 billion, total deposits of about $1.1 billion (including IPC demand deposits of about $393.2 million) and total loans and discounts of about $656 million.

9. WTB is the eighth largest commercial bank based in Washington, and the second largest bank headquartered in that part of the State of Washington which lies east of the Cascade Mountains. It operates a total of eight banking offices, all in the Spokane metropolitan area. On December 31, 1970, WTB had total assets of about $102.6 million, total deposits of about $87.3 million (including IPC demand deposits of about $37.7 million) and total loans and discounts of about $53.2 million.

10. Commercial banking in the State of Washington is highly concentrated. The five largest banks in the state hold 75 percent of the state's total commercial bank deposits. The two largest

banks in the state hold about 51 percent of such deposits.

11. Spokane is the second largest city in the State of Washington. The Spokane metropolitan area is comprised of the urbanized area in and about the City of Spokane. It is the trade center of a region which encompasses 36 counties and 1.2 million inhabitants. Agriculture is the major income producing industry of the region. The area also contains important mining districts, extensive timber forests and a large number of lumber mills.

12. The Spokane metropolitan area is served by six commercial banks which operate more than 34 banking offices in the area. Two of the six banks, Old National Bank of Washington and The First National Bank of Spokane, are affiliates of Washington Bancshares, a bank holding company headquartered in Spokane. Banking in the Spokane metropolitan area is highly concentrated. The three largest banking organizations hold over 90 percent of the commercial bank deposits and have about 85 percent of all bank offices located in the Spokane metropolitan area. WTB is the third largest banking organization in the area with about 17.6 percent of the total deposits in commercial banks.

13. Spokane County is served by nine banks, including the two affiliates referred to in paragraph 12 of this complaint, which operate 47 banking offices in the county. Banking in Spokane County is highly concentrated with the three largest banks holding about 89 percent of the total commercial bank deposits in the county. WTB is the third largest bank in Spokane County with about 16.4 percent of the county's commercial bank deposits. NBC has about 1.8 percent of such deposits.

14. Washington bank law permits a bank to establish de novo branches only in the city in which it has its principal place of business, in unincorporated areas in the county in which it is headquartered, or in incorporated cities and towns which do not have banking offices of any commercial bank. NBC may not under

Washington law establish a de novo branch in Spokane. At present, only three banking organizations may legally open new branch offices in Spokane and only six may legally do so in the unincorporated areas of Spokane County. Only three of these organizations have deposits in excess of $10 million. WTB is one of these organizations.

15. NBC has the capability and incentive to enter commercial banking in the Spokane metropolitan area by means less anti-competitive than by merger with WTB.

16. WTB has the capability and incentive to expand de novo into unincorporated areas of Spokane County and by other means into other areas of eastern Washington. WTB also has the capability and incentive to combine with one or more other middle-sized banks in the state to form a new state-wide banking organization able to compete with the existing market leaders in banking markets throughout Washington.

17. Correspondent bank services are generally provided by large metropolitan banks to smaller local banks, and they include the clearing of checks and other commercial transactions, participation loans (usually larger loans) with the local bank, providing various forms of investment and other information and advice, providing data processing services, and providing a variety of other financial services which a particular local bank may require. As partial compensation for such services, a local bank maintains inter-bank deposits with its principal correspondent bank.

18. NBC is a leading source of correspondent bank services to other commercial banks in Washington. The market for the offering and sale of correspondent bank services in Washington is highly concentrated with NBC and one other bank holding about 70 percent of the total correspondent deposits in the state.

19. WTB presently holds a small share of correspondent bank

deposits in Washington. It offers correspondent services to many local banks operating in eastern Washington. WTB has the resources and incentive to become a greater competitor in providing general correspondent services to small banks in eastern Washington.

IV

OFFENSE

20. Defendants NBC and WTB entered into an agreement on or about February 24, 1971 which, if consummated, will result in the merger of NBC and WTB under the charter and with the title of NBC. Under the merger agreement, shareholders of WTB common stock would receive common stock in Marine in exchange for their holdings of such WTB stock. The Comptroller of the Currency approved the proposed merger on September 24, 1971.

21. The effect of the merger described in paragraph 20 above may be to substantially lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) actual and potential competition between NBC and WTB in commercial banking will be permanently eliminated;

(b) actual and potential competition generally in commercial banking in Spokane County and in the Spokane metropolitan area will be substantially lessened;

(c) NBC will be eliminated as a potential substantial competitive factor in commercial banking in the Spokane metropolitan area;

(d) WTB will be eliminated as a potential substantial competitive factor in that part of Spokane County which is outside of the Spokane metropolitan area;

(e) WTB will be eliminated as a potential substantial competitive factor in banking markets in other

parts of eastern Washington outside of Spokane County;

(f) the position of NBC and the other dominant Washington banks will become entrenched in many local markets in eastern Washington;

(g) potential competition will be reduced by the elimination of WTB as a potential member of a new banking organization capable of entering commercial banking in other markets throughout the State of Washington;

(h) the number of middle-sized banks in Washington capable of combining with other middle-sized and smaller banks to become a statewide system will be reduced;

(i) actual and potential competition between NBC and WTB in correspondent banking in eastern Washington will be permanently eliminated; and

(j) mergers and consolidations between other leading banks in Washington may be fostered, resulting in the concentration of banking resources in the state in the hands of a few large banks, thereby reducing diversity in banking choices and promoting parallel policies among leading banks in local markets.

PRAYER

WHEREFORE, plaintiff prays:

1. That the merger agreement described in paragraph 20 of this complaint be adjudged to be unlawful, in violation of Section 7 of the Clayton Act.

2. That defendants and all persons acting on their behalf be enjoined from carrying out the aforesaid agreement of merger, or any similar plan or agreement, the effect of which would be to

merge, consolidate or in any other way combine the businesses of said defendants.

3. That the plaintiff have such other and further relief as the Court may deem just and proper.

4. That plaintiff recover the costs of this action.

JOHN N. MITCHELL
Attorney General

RICHARD J. TORRE

RICHARD W. McLAREN
Assistant Attorney General

ALLAN S. HOFFMAN

BADDIA J. RASHID

PHILIP L. VERVEER

CHARLES L. WHITTINGHILL

PETER C. CARSTENSEN
Attorneys, Department of Justice

United States Attorney

GPO 883—O-713-713

11-22-71 E Kiefer

FILED IN THE
UNITED STATES DISTRICT COURT
Western District of Washington

NOV 23 1971

CHARLES A. SCHAAF, Clerk
By _____, Deputy

UNITED STATES DISTRICT COURT

For the

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, vs. MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE; and WASHINGTON TRUST BANK, Defendants.	Civil Action File No. 237-71C2 ANSWER

For answer to the Complaint of plaintiff, the above named defendants admit, deny and allege as follows:

I

1. Defendants admit this Court has jurisdiction of this action by reason of the statutes cited in paragraph 1 of plaintiff's Complaint but deny that defendants have violated or, by consummating the merger alleged in the Complaint, would violate any of those statutes.

2. Defendants admit the allegations in paragraph 2 of plaintiff's Complaint.

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II

3. Defendants admit the allegations in paragraph 3 of plaintiff's Complaint.

4. Defendants admit the allegations in paragraph 4 of plaintiff's Complaint.

5. For answer to paragraph 5 of plaintiff's Complaint, defendants allege that Washington Trust Bank is a corporation organized and existing under the laws of Washington, engaged in the business of banking, and maintains its principal place of business in Spokane, Spokane County, Washington.

III

6. For answer to paragraph 6 of plaintiff's Complaint, defendants admit that commercial banks fill a role in the nation's economy, and that many commercial banks perform some or all of the functions described in the said paragraph, but deny that all the functions described in the paragraph are performed by all commercial banks, affirmatively allege that many of the functions and services described in the paragraph are also performed by institutions other than commercial banks, and except as herein expressly admitted, deny any and all other allegations contained in the paragraph.

7. Answering paragraph 7 of plaintiff's Complaint, the defendants admit that both of the defendant banks are engaged in Interstate Commerce.

8. Answering paragraph 8 of plaintiff's Complaint, the defendants admit that The National Bank of Commerce of Seattle is the second largest commercial bank based in Washington, but deny plaintiff's allegation that the said bank is the second

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largest commercial bank in the state; and, in this connection, allege that Seattle First National Bank, The Bank of California, and Canadian Imperial Bank of Commerce each have banking offices and do a banking business in the state of Washington and all of them are larger than The National Bank of Commerce of Seattle. Further answering the allegations of said paragraph 8, the defendants expressly deny any implication thereof to the effect that either the state of Washington or "counties of eastern Washington" constitute a relevant market area, or an appropriate geographical region, or section of the country within the purview of §7 of the Clayton Act, with respect to the business or activities of the defendants or any of them. Except as herein expressly denied, the defendants admit the remaining allegations of said paragraph.

9. Defendants admit the allegations of paragraph 9 of plaintiff's Complaint, except that defendants expressly deny any implication thereof to the effect that either the state of Washington or "that part of the state of Washington which lies east of the Cascade Mountains" constitute a relevant market area or an appropriate geographical region or section of the country, within the purview of §7 of the Clayton Act, with respect to the business or activities of the defendants or any of them.

10. Answering paragraph 10 of plaintiff's Complaint, defendants deny that commercial banking in the state of Washington is highly concentrated, or that it is concentrated at all, and further deny all other allegations therein contained.

11. Answering paragraph 11 of plaintiff's Complaint, defendants admit that the city of Spokane is the second largest

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city in the state of Washington, that the Spokane metropolitan area is comprised of the urbanized area in and about the city of Spokane, that agriculture is a major income-producing industry in Spokane county, and that there are extensive timber forests, a number of lumber mills and some mining districts in Spokane County. Except as herein expressly admitted, the defendants deny each and every allegation contained in said paragraph.

12. Answering paragraph 12 of plaintiff's Complaint, defendants admit that the Spokane metropolitan area is served by not less than six commercial banks which operate more than 34 banking offices in the area; admit that two of such banks, namely Old National Bank of Spokane and The First National Bank of Spokane, are affiliates of Washington Bancshares, a bank holding company headquartered in Spokane. Further answering said paragraph, defendants deny that Washington Trust Bank is the third largest banking organization in the Spokane area, and in this connection, allege that Seattle First National Bank, Old National Bank of Spokane and Pacific National Bank of Washington each have banking offices and do a banking business in the City of Spokane and all three of them are larger than Washington Trust Bank. Defendants deny that banking in the Spokane area is highly concentrated or that it is concentrated at all, and except as expressly admitted above, deny each and every allegation in the said paragraph.

13. Answering paragraph 13 of plaintiff's Complaint, defendants allege that Spokane County is served by ten (not nine) commercial banks, including the two affiliated banks referred to in paragraph 12 of the Complaint, and that the said ten banks

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operate 51 (not 47) banking offices in the county. Defendants further admit that Washington Trust Bank has about 16.4% of the county's commercial bank deposits and that The National Bank of Commerce of Seattle has about 1.8% of such deposits. Defendants deny that banking in Spokane County is highly concentrated or that it is concentrated at all and, except as expressly admitted above, deny each and every allegation contained in said paragraph.

14. Answering paragraph 14 of plaintiff's Complaint, defendants admit that the banking law of the state of Washington permits a bank to establish de novo branches only in the city in which it is headquartered, in unincorporated areas in the county in which it has its principal place of business, and in incorporated cities and towns which do not have banking offices of any commercial bank, and that under Washington law The National Bank of Commerce of Seattle is not permitted to establish a de novo branch in the city of Spokane or in Spokane County except in an incorporated city or town in Spokane County which does not have banking offices of any commercial bank. Defendants allege that 4 (not 3) banks may, with the approval of the regulatory authorities, legally open new branch offices in the City of Spokane, deny that any of those 4 banks have less than $10 million in deposits, and admit that Washington Trust Bank is one of those banks. Further answering the allegations of said paragraph, defendants allege that 7 (not 6) banks may, with the approval of the regulatory authorities, legally open de novo branches in Spokane County in the unincorporated areas of Spokane County and except as expressly admitted above, defendants deny each and every allegation contained in said paragraph.

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15. Defendants deny the allegations contained in paragraph 15 of plaintiff's Complaint.

16. Defendants deny the allegations contained in paragraph 16 of plaintiff's Complaint.

17. Defendants admit the allegations contained in paragraph 17 of the Complaint, but deny the implications in the paragraph, if such are intended, that the services alleged constitute a relevant line of commerce within the purview of Section 7 of the Clayton Act, or that the two banks, parties defendant to this action, compete with one another in offering or performing such services.

18. Answering paragraph 18 of plaintiff's Complaint, defendants admit that The National Bank of Commerce of Seattle furnishes various services to other commercial banks in Washington and elsewhere, but except as expressly admitted above, defendants deny each and every allegation contained in said paragraph.

19. Answering paragraph 19 of plaintiff's Complaint, defendants admit that Washington Trust Bank furnishes certain limited services for some small banks. Except as expressly admitted above, defendants deny each and every allegation contained in said paragraph.

IV

20. Defendants admit the allegations contained in paragraph 20 of plaintiff's Complaint.

21. Defendants deny each and every allegation contained in paragraph 21 of plaintiff's Complaint.

FOR FURTHER ANSWER AND BY WAY OF A SEPARATE AND

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AFFIRMATIVE DEFENSE, the defendants allege that the anti-competitive effects, if any, attributable to the pending merger alleged in plaintiff's Complaint are to be judged and governed by the standards set forth in the Bank Merger Act of 1966 [12 U.S.C. 1828(c)] and if there are any anticompetitive effects resulting from the said proposed merger, such anticompetitive effects are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Wherefore having fully answered plaintiff's Complaint, defendants pray that this action be dismissed, the injunction dissolved, and defendants have their costs and disbursements herein to be taxed.

DATED November 22, 1971.

By R. A. Moen
R. A. Moen
One of the attorneys for the defendants

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A copy of the foregoing Answer of Defendants to Plaintiff's Complaint was airmailed on November 22, 1971, addressed to:

Richard J. Torre, Attorney
Anti-Trust Division
Department of Justice
Washington, D. C. 20530

R. A. Moen
R. A. Moen

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. MARINE BANCORPORATION: THE NATIONAL BANK OF COMMERCE OF SEATTLE and WASHINGTON TRUST BANK, Defendants, and WILLIAM B. CAMP, Comptroller of the Currency Intervenor.	Civil Action No. 237-71C2

FILED IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
OCT 8 1971
CHARLES D. SCHARF, CLERK
By _____ Deputy

INTERVENOR'S ANSWER TO PLAINTIFF'S COMPLAINT

Intervenor, William B. Camp, Comptroller of the Currency, by his attorneys, answers the Complaint herein as follows:

I

1. Intervenor admits that plaintiff purports to bring this suit under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. §25) commonly known as the Clayton Act, and seeks the relief as alleged in paragraph 1 of the Complaint. Intervenor denies any inference or implication arising out of paragraph 1 of the Complaint that the standards under which the legality of this merger is to be determined are limited to those of Section 7 of the Clayton Act. Intervenor further answers that the correct standards are those set forth in the Act of Congress of February 21, 1966, 80 Stat. 7, amending Section 18(c) of the Federal Deposit Insurance Act (12

U.S.C. 1828(c), commonly known as the Bank Merger Act.

2. Admitted.

II

3. Admitted.

4. Admitted.

5. Admitted.

III

6. Intervenor denies each and every allegation in paragraph 6 of the Complaint except it admits that generally banks accept deposits and make loans and advances; that demand deposits are held by banks and that loans to individuals and businesses supply part of their credit requirements wherever they may be located; that banks accept deposits other than demand deposits from various types of depositors and provide other services to the public, including those financial services detailed in the 5th sentence of paragraph 6.

Intervenor denies that a principle function of either of the defendant banks or any other bank is the creation of net additions to the money supply. Such creation is not an element of competition among banks, does not shield banks from the competition of other financial institutions, and in no way makes banks unique. The proportion of money payments made by checks drawn against demand deposits in the United States is not known.

Intervenor further avers and alleges that banks are in direct and substantial competition with other financial institutions in the loaning of money at interest and are in no respect unique in this function.

Intervenor further answers that banks accept deposits prin-

cipally as a source of lendable funds. In return for such deposits banks offer interest payments, security and safekeeping of funds, the honoring of drafts drawn against a depositor's account and other inducements. To obtain such deposits banks compete directly and substantially with other financial institutions vigorously seeking such funds and are in no respect unique in this endeavor.

7. Admitted.

8. Intervenor admits the allegations of paragraph 8 of the Complaint, except that it is unable to admit or deny the first sentence thereof, not knowing to what the comparative "second largest" relates. In addition, Intervenor denies any implication that the State of Washington and/or the "counties of eastern Washington" constitute a section of the country within which the Court should measure the effects of this acquisition on competition.

9. Intervenor admits the allegations in paragraph 9 of the Complaint, except that it is unable to admit or deny the first sentence of paragraph 9, in that it does not know to what the comparative "eighth largest" and "second largest" relate.

10. Intervenor denies each and every allegation of paragraph 10 of the Complaint, and further denies that the concept of "concentration" is meaningful in a regulated industry such as banking.

11. Intervenor denies each and every allegation in paragraph 11 of the Complaint, except that it admits that Spokane has the second largest population of any city in the State of Washington and also admits the existence of agriculture and

mining industries and the presence of extensive timber forests and numerous lumber mills around the Spokane area.

12. Intervenor admits the first and second sentences of paragraph 12 of the Complaint, and denies each and every other allegation in paragraph 12. Intervenor denies that the concept of concentration is meaningful in a regulated industry such as banking.

13. In answer to paragraph 13 of the Complaint, Intervenor alleges that Spokane County is served by ten, not nine, commercial banks, and that the said ten banks operate 51, not 47, banking offices in the county. Intervenor admits that Washington Trust Bank has about 16.4% of the county's commercial bank deposits and that the National Bank of Commerce of Seattle has about 1.8% of such deposits. Intervenor denies each and every other allegation contained in paragraph 13.

14. Intervenor admits the first and second sentences of paragraph 14. Intervenor further alleges that such permission is subject to the approval of the state or federal bank regulatory agencies, as the case may be, and that without such approval such branching would be unlawful. Intervenor alleges that four, not three, banks may, with the approval of the regulatory authorities, legally open new branch offices in the City of Spokane. Intervenor denies that any of those four banks have less than $10 million in deposits, and admits that Washington Trust Bank is one of those banks. Further answering the allegations of said paragraph, Intervenor alleges that seven, not six, banks may, with the approval of the regulatory authorities, legally open de novo branches in Spokane County. Except for

those allegations admitted above, Intervenor denies each and every allegation contained in paragraph 14.

15. Denied.

16. Denied.

17. Intervenor admits that the allegations in paragraph 17 of the Complaint constitute a generalized description of the furnishing of some services by one bank to another which is sometimes done under a relationship called correspondent banking. Intervenor denies that such a relationship constitutes a line of commerce for purposes of Section 7 of the Clayton Act, and that the defendant banks herein compete with one another in the furnishing or offering to furnish such services.

18. Intervenor denies each and every allegation in paragraph 18 of the Complaint, except that it admits that the National Bank of Commerce furnishes some banking services to some other banks in the state of Washington and elsewhere.

19. Intervenor denies each and every allegation in paragraph 19 of the Complaint, except that it admits that Washington Trust Bank furnishes limited services to some smaller banks.

IV

20. Admitted.

21. Intervenor denies each and every allegation contained in paragraph 21 of the Complaint.

AFFIRMATIVE DEFENSE

Intervenor alleges that the Bank Merger Act of 1966, 80 Stat. 7, U.S.C., §1828(c) is an affirmative defense in this case because any anticompetitive effects of this merger (the existence or substantiality of which is denied) are clearly outweighed in the

public interest by the probable effects of this transaction in meeting the conveniences and needs of the community to be serviced 12 U.S.C. §1828(c)(5)(B).

Charles H. McEnerney Jr.
CHARLES H. McENERNEY, JR.

Jon D. Hartman
JON D. HARTMAN
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15th & Pennsylvania Ave., N.W.
Washington, D. C. 20220
Area Code 202-964-2309

Dated: Dec. 7, 1971

DEFENDANTS' ANSWERS TO PLAINTIFF'S
INTERROGATORIES DATED MARCH 10, 1972

Interrogatory No. 5

State for (A) NBC * * *

(2) The name and address of each advertising medium used (e.g., the location of each billboard, the name and address of each television station, each newspaper, etc.);

(3) The estimated total Spokane County circulation or audience reached by each newspaper, magazine, radio station and television station listed in answer to part (2) of this interrogatory;

* * *

ANSWER

NEWSPAPER - DAILIES

INTERROGATORY 5 - PARTS 2 & 3 THE NATIONAL BANK OF COMMERCE OF SEATTLE

Prepared By: [illegible] Date: 5/1
Approved By: [illegible] 5/2

	1967	1968	1969	1970	1971	Spokane County Circulation, if applicable and/or available
Walla Walla Union-Bulletin Walla Walla, Washington	X	X	X	X	X	
Spokane Chronicle/ Spokesman Review Spokane, Washington						
Circulation - Combined	107,138	133,629	135,449			

WEEKLIES (Except where specifically noted, Spokane County circulation negligible)

	1967	1968	1969	1970	1971
Bellevue American (+Suppl.) Bellevue, Wash.	X	X	X	X	X
Kirkland Eastside Journal (+Suppl.) Kirkland, Washington	X	X	X	X	X
Lynnwood Enterprise Lynnwood, Washington	X	X	X	X	X
Mercer Island Reporter Mercer Island, Washington	X	X	X	X	X
Renton Chronicle Renton, Washington	X	X	X	X	X
Auburn Globe News Auburn, Washington	X	X	X	X	X
Burlington Journal/ Sedro Woolley Courier-Times Sedro Woolley, Washington	X	X	X	X	X
Camas Post-Record & Business Gazette Camas, Washington	X	X	X	X	X
Cheney Free Press Cheney, Washington (Circ. 1970, Pyfrom)	X	X	X	X	X
Clarkston Herald Clarkston, Washington	1800 X	1820 X	1830 X	1970 X	2043 X

WEEKLIES (Except where specifically noted, Spokane County circulation negligible)

INTERROGATORY 5 - PARTS 2 & 3 THE NATIONAL BANK OF COMMERCE OF SEATTLE

Prepared By
Approved By

	1967	1968	1969	1970	1971
Almira Herald Almira, Washington	X	X	X	X	X
Blaine Journal Blaine, Washington	X	X	X	X	X
Herald Reporter Brewster, Washington	X	X	X	X	X
Statesman Examiner Colville, Washington	X	X	X	X	X
News Standard Coulee City, Washington	X	X	X	X	X
Dayton Chronicle Dayton, Washington	X	X	X	X	X
Tri-County Tribune Deer Park, Washington	X	X	X	X	X
Circulation by Years	1650	1560	1900 (+Heath, Elma Tribune)	N/A	3200
Elma Chronicle Elma, Washington	X	X	X	X	X
Goldendale Sentinel Goldendale, Wash.	X	X	X	X	X
Puget Sound Mail La Conner, Wash.	X	X	X	X	X
Colville Statesman-Examiner Colville, Washington	X	X	X	X	X

NEWSPAPERS	1967	1968	1969	1970	1971
The Collegian Walla Walla Jr. College Walla Walla, Washington	X	X	X	X	X
The Western Front Western Washington St. College Bellingham, Washington	X	X	X	X	X
Tyee (Seattle Tyee) University of Washington Seattle, Washington		X	X		
University of Washington Daily University of Washington Communications Bldg. Seattle, Washington	X	X	X	X	X
The Easterner Eastern Washington State College Cheney, Washington			X		
Spokane County Circulation = 81,000					
The City Collegian Seattle Community College Seattle, Washington				X	X
The Timberline Grays Harbor College Aberdeen, Washington				X	X

NEWSPAPERS, MISCELLANEOUS (Except where specifically noted, Spokane County circulation negligible)

Newspapers	1967	1968	1969	1970	1971	
Northwest Dairy News 635 Elliott Ave. W Seattle, Washington			X	X	X	Circulation, 1971 - Spokane, Lincoln, Adams Counties 5 Rural Orchard Dist 388.
The Scanner (& Ming Po, Japs News) 18601 Pacific Highway So. Seattle, Washington			X	X	X	
Catholic Northwest Progress 907 Terry Ave. Seattle, Washington			X		X	
Seattle Shopping News 2312 - 3rd Ave. Seattle, Washington		X	X	X	X	
STA News 559 Roy St. Seattle, Washington		X	X	X	X	
The Argus 510 Henry Bldg. Seattle, Washington	X	X	X	X	X	
Christian Science Monitor Pacific Edition 130 Cremer Bldg. Seattle, Washington	X	X	X	X	X	Spokane County - 1967 - 309 circulation.
Fairchild Times Fairchild Washington	X					Circulation 1967 - 8,913

NEWSPAPERS, MISCELLANEOUS (Except where specifically noted, Spokane County circulation negligible)

Newspapers	1967	1968	1969	1970	1971	
Grange News 3806 Western Avenue Seattle, Washington	X	X	X	X	X	Circulation 1971 - Spokane County 4,500
Grays Harbor Farmer P.O. Box 671 Montesano, Washington	X	X	X	X	X	
Jewish Transcript P.O. Box 1796 Seattle, Washington		X	X	X	X	
North American Post 215 Fifth So. Seattle, Washington		X				
Seattle Journal of Commerce 81 Columbia Seattle, Washington	X	X			X	
Washington State Labor News 25801 First Avenue Seattle, Washington	X	X	X			
Washington Farmer 401 Review Spokane, Washington	X	X	X	X	X	Circulation - Spokane County, 1969 - 2,540
Washington Motorist 350 Elliott Ave. W. Seattle, Washington	X	X				Circulation - 1971 - Spokane County 1,500
Western Farmer 201 Elliott Ave. W. Seattle, Washington	X	X	X	X	X	Circulation - 1971 - Spokane County 543

page 37

RADIO STATION		1967	1968	1969	1970	1971	Spokane County audience if applicable and/or available:
KAPS Box 70 Mt. Vernon, Wash.		X	X	X			
KARI P.O. Box 1037 Bellingham, Wash.		X	X				
KASY Box 459 Auburn, Wash.		X			X		
KATO 2939 4th South Seattle, Wash.		X	X	X	X		
KBRC P.O. Box 250 Mt. Vernon, Wash.		X	X	X	X	X	
KELY W. 500 Boone Ave. Spokane, Wash.				X	X	X	Audit/Nielsen Pulse 1968- 43,700 Ish - To Tph - present Flat Lb
KOZE Box 936 Lewiston, Idaho				X	X	X	

RADIO STATION	1967	1968	1969	1970	1971	Spokane County audience if applicable and/or available:
KEPR P.O. Box 2648 Pasco, Wash.	X	X	X			
KGHO P.O. Box 576 Aberdeen, Wash.		X				
KGMI P.O. Box 943 Bellingham, Wash.	X	X	X	X	X	
KGY Box 710 Olympia, Wash.	X	X	X	X		
KHQ 4202 S. Regal Spokane, Wash.	X					Circulation Picture - 1965 - 79,200 Weekly Total - Spokane Co.
KIMA P.O. Box 702 Yakima, Wash.	X	X	X			
KIT Box 1222 Yakima, Wash.	X	X	X	X	X	

RADIO STATION		1967	1968	1969	1970	1971							
KREM 4103 South Regal St. Spokane, Wash.		X	X				Circulation Rate - 1968 - 124,300 weekly Total Coverage Editions &						
KREO Box 1227 Everett, Wash.		X	X										
KSPO Box 2203 Spokane, Wash.		X											
KUEN P.O. Box 79 Wenatchee, Wash.			X	X			Circulation Rate - 1968 - 36,200 weekly Total Coverage Editions Co						
KWIZ 3021 Rockefeller Ave. Everett, Wash.		X											
KWIW Box E Grand Coulee, Wash.				X									
KCVL P.O. Box 268 Colville, Wash.		X	X	X	X	X							

TELEVISION

TELEVISION STATION		1967	1968	1969	1970	1971	Spokane County audience if applicable and/or available:
KOMO 100-4th North Seattle, Washington		X	X	X			
KIRO Third & Broad Seattle, Wash.		X	X	X			
KHQ/KEPR Box 702 Yakima, Wash.		X	X	X		X	
KING 320 Aurora Ave. North Seattle, Wash.		X	X	X		X	
KXLY West 500 Boone Ave. Spokane, Wash.		X					CACB- 1971 - Weekly Cume Annual Avg. Quarter-hr. 272,000
KLEW Box 702 Yakima, Wash.	Lewiston		X	X		X	
KVOS 1151 Ellis St. Bellingham, Wash.			X				

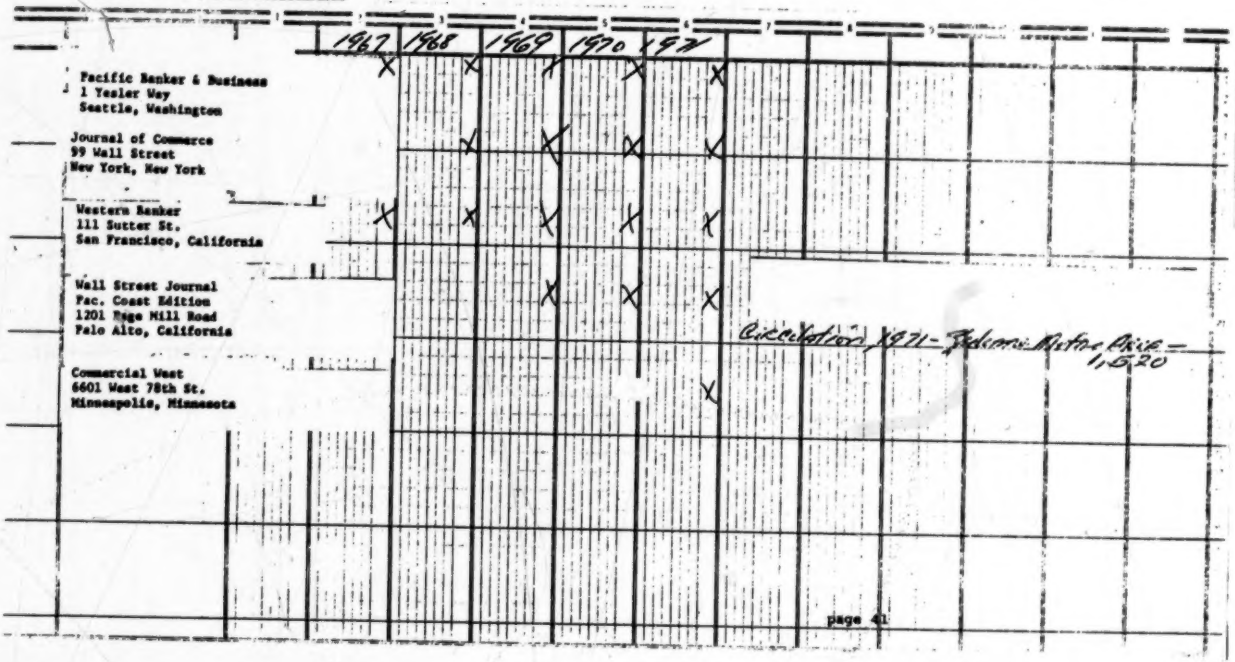
MAGAZINES, Miscellaneous (Except where specifically noted, Spokane County circulation negligible)

Magazines	1967	1968	1969	1970	1971	
Seattle Magazine 320 Aurora Ave, No. Seattle, Washington		X				
Seattle Supersonics Pgm. 720 Cherry Street Seattle, Washington		X	X			
Sunset Magazine (Washington Only) Menlo Park, California	X	X	X			Circulation (Spokane County, 1970 - 7,823)
Puget Sound Keller Pgm Box 9466 Seattle, Washington			X	X		
Marine Digest 70 Columbia Street Seattle, Washington	X	X	X	X	X	
Seattle Opera Magazine 405 Lynn Bldg. Seattle, Washington	X	X	X	X	X	
Puget Soundings 1238 - 120th Pl. N.E. Bellevue, Washington	X	X	X	X	X	
Washington Cattlemen's Magazine 246 North Wenatchee Wenatchee, Washington		X	X	X	X	Circulation Spokane County 1971 - 350
Performing Arts Program 302 Grovernor House Seattle, Washington	X	X	X	X		

TELEPHONE DIRECTORY (Yellow Pages)–Except Where specifically noted, Spokane County circulation negligible

	Location	1967	1968	1969	1970	1971
Pacific Northwest Bell 1200 Third Ave. Seattle, Wash.	Spokane (1971 circulation 152,000)	X	X	X	X	X
	Lewiston	X	X	X	X	X
	Bellingham	X	X	X	X	X
	Aberdeen	X	X	X	X	X
	Walla Walla	X	X	X	X	X
	Skagit	X	X	X	X	X
	McCleary	X	X	X	X	X
	Moses Lk	X	X	X	X	X
	Vancouver	X	X	X	X	X
	Dayton	X	X	X	X	X
	Whatcom	X	X	X	X	X
	Lower Yakima Valley	X	X	X	X	X
	Wenatchee	X	X	X	X	X
	Goldendale	X	X	X	X	X
	Bellevue	X	X	X	X	X
	Asotin	X	X	X	X	X
	Seattle	X	X	X	X	X
	YAKIMA	X	X	X	X	X

MAGAZINES - BANKING TRADE PUBLICATIONS



Interrogatory No. 9

State whether * * * (B) WTB have, since January 1, 1967, considered offering new banking services. If the answer is in the affirmative, for each service considered state:

(1) Dates on which considered or discussed;
(2) Names or officers or directors participating;
(3) New service considered;
(4) Whether service was added;
(5) If service was not added, the reasons for such decision.

ANSWER

* * *

Following is data relative to new banking services considered by WTB since January 1, 1967:

Change of Banking Hours

(1) Considered and discussed during February, 1971.

(2) Participating were John C. Hilsen, Vice President; Leonard C. Decker, Vice President; F. Neale Bock, Jr., Vice President; William L. Hart, Vice President; William C. Counsell, Assistant Vice President & Cashier; Donald L. Kirkbride, Vice President & Director; William K. Scammell, Jr., Vice President & Director; Claude Flormann, Assistant Vice President & Assistant Secretary; Thomas L. Perko, Vice President; Eldon B. Partch, Assistant Vice President and Robert J. St. Clair, Auditor.

(3) Changing banking hours from 10:00 a.m. to 3:00 p.m. to 9:30 a.m. to 4:30 p.m.

(4) Service was added March 1, 1971.

(5) N/A

X-200 Checking Account

(1) Considered and discussed during July, 1969.

(2) Participating officers and directors were same as above #2 with the exception of F. Neale Bock, Jr., Vice President.

(3) X-200 checking accounts to be exempt from service charges if minimum balance is $200 or more; $2.00 per month charge if balance drops below $200.

(4) Service was added August, 1969.

(5) N/A

Food Stamp Program

(1) Considered and discussed in February, 1968.

(2) Participating officers and directors were the same as above with the exception of F. Neale Bock, Jr., Vice President.

(3) Service was the sale of Food Stamps in our outlying offices for the State of Washington (Opportunity Pines and East Trent branches only).

(4) Service was added February, 1968.

(5) N/A

Drive-In Visual Auto Teller

(1) Considered and discussed beginning June, 1969.

(2) Participating officers and directors were same as above plus Richard A. Stejer, Vice President and Director.

(3) Service provides Visual Auto Teller equipment in lieu of drive-in island at South Hill Drive-In Branch under construction. Also considered for North Monroe Drive-In Branch and East Sprague Drive-In Branch.

(4) These installations were made at the South Hill Drive-In Branch which opened in January, 1970; at our North Monroe Drive-In Branch new building which opened December, 1970; and at our East Sprague Drive-In Branch remodeling; and in August, 1971, at our remodeled Downtown Drive-In Branch.

(5) N/A

Overdraft Loan Program With Check Guarantee Card Feature

(1) Investigation assignment was made in October, 1967. Service was considered and discussed continually until a decision was made July 15, 1968.

(2) Investigation assignment was made to William L. Hart, Vice President with direct involvement by John C. Hilsen, Vice President and further participation by all officers and directors listed above.

(3) Consideration was given to Overdraft Loan Programs and Check Guarantee Cards.

(4) The decision was made not to provide an Overdraft Loan Program at that time (this service was added December, 1969 as an adjunct to Master Charge Card services and is called Master Check Loan).

(5) Check Guarantee Cards have not been added as it is not regarded as profitable.

Master Charge Cash-By-Mail

(1) Considered and discussed in the Fall of 1969.

(2) Dennis R. Patterson, Assistant Cashier initiated the service. Participating were John C. Hilsen, Vice President; William K. Scammell, Jr., Vice President & Director and Philip H. Stanton, President & Director.

(3) Cash-By-Mail allows any Master Charge cardholder to obtain cash by mail up to his credit card limit.

(4) Service was added December, 1969.

(5) N/A

TV Auto Banking

(1) Considered and discussed during the Summer of 1969.

(2) Participating were Leonard C. Decker, Vice President; Richard A. Stejer, Vice President & Director; William W. Counsell, Assistant Vice President and Cashier; Donald L. Kirkbride, Vice President & Director; William K. Scammell, Jr., Vice President & Director; and Philip H. Stanton, President & Director.

(3) Consideration of installation of TV Auto Teller units at new or remodeled locations.

(4) Service not added.

(5) It was decided to use the Visual Auto Teller units instead.

Superchek

(1) Considered and discussed in late 1970 and early 1971.

(2) Participating were Thomas C. Garrett, Assistant Vice President; John C. Hilsen, Vice President; and John Schaar, Manager, Information Systems Department.

(3) Superchek would provide a pre-authorized bill paying system for customers with direct transfer of funds to customer's accounts.

(4) Service was not added.

(5) We did not believe it could be profitable.

Freight Billing

(1) Considered and discussed in June, 1971.

(2) Participating officers were same as above #2.

(3) To compute freight billings, process and debit shipper with credit to carrier's accounts (for local freight companies).

(4) Service was not added.

(5) We did not believe it could be profitable.

Bank Card Embossing

(1) Considered and discussed in July, 1970.

(2) Participating were Dennis R. Patterson, Assistant Cashier; John C. Hilsen, Vice President.

(3) To emboss Master Charge Cards for another local bank.

(4) Service was added July, 1970.

(5) N/A

Master Charge Christmas Deferred Payment

(1) Considered and discussed in October and November, 1971.

(2) Participating were Dennis R. Patterson, Assistant Cashier; John C. Hilsen, Vice President; William K. Scammell, Jr., Vice President & Director; and Philip H. Stanton, President & Director.

(3) To allow Master Charge preferred cardholders to skip the payment of December, 1971, without penalty.

(4) Service was added in November, 1971.

(5) N/A

Master Charge Special Purpose Checks

(1) Considered and discussed in October and November, 1970.

(2) Participating were the same four officers and directors as above.

(3) To mail to all Master Charge cardholders special purpose checks with which they could pay their motor vehicle license, income tax to the Internal Revenue Service and their property tax to Spokane County.

(4) This service was added November, 1970.

(5) N/A

Master Charge Draft Processing For Correspondent Banks

(1) Considered and discussed in September, 1969.

(2) Participating were Dennis R. Patterson, Assistant Cashier; John C. Hilsen, Vice President; William K. Scammell, Jr., Vice President & Director; and Philip H. Stanton, President & Director.

(3) To process Master Charge sales drafts for correspondent banks in Montana and Washington.

(4) Service was added in September, 1969.

(5) N/A

Washington Trust Bank Self-Employed Retirement Plan and Trust (Keogh Plan or HR-10)

(1) Considered and discussed prior to February 7, 1968.

(2) Participating were Kendall S. Wynstra, Vice President & Trust Officer; William K. Scammell, Jr., Vice President & Director; and Philip H. Stanton, President & Director.

(3) To provide a self-employed retirement plan and trust under the Internal Revenue Service qualification letter of February 7, 1968.

(4) Service was added February 7, 1968.

(5) N/A

Washington Trust Bank Master Corporate Profit-Sharing Plan and Trust

(1) Considered and discussed prior to May 28, 1971.

(2) Participating officers and directors were the same as above.

(3) To provide corporate profit-sharing trusts under the Internal Revenue Service qualification letter of May 28, 1971.

(4) Service was added May 28, 1971.

(5) N/A

Public Works Trust Escrows

(1) Considered and discussed prior to February 23, 1970.

(2) Participating officers and directors were the same as above.

(3) To provide investment in Washington Trust Bank Savings Certificates of public contractors retainage funds on state, municipal and state agency contracts.

(4) Service was added February 23, 1970.

(5) N/A

Correspondent DDA Processing

(1) Considered and discussed beginning February, 1967.

(2) Participating were William K. Scammell, Jr., Vice President & Director; Thomas L. Perko, Vice President; Richard A. Stejer, Vice President & Director; Eldon B. Partch, Assistant Vice President; and William L. Hart, Vice President.

(3) To process DDA for correspondent banks on our computer.

(4) Service was added in 1967.

(5) N/A

Label Printing

(1) Considered and discussed in January, 1968.

(2) Participating was John C. Hilsen, Vice President.

(3) To print continuous form mailing labels on our computer print-out equipment for customers as needed.

(4) Service was added in September, 1968.

(5) N/A

Bank General Ledger Processing

(1) Considered and discussed beginning in April, 1968.

(2) Participating were John C. Hilsen, Vice President and Eldon B. Partch, Assistant Vice President.

(3) To provide general ledger print-outs for correspondent banks.

(4) Service was added in September, 1968.

(5) N/A

Labor Distribution

(1) Considered and discussed in January, 1968.

(2) Participating was John C. Hilsen, Vice President.

(3) Process labor distribution on a custom basis for industrial accounts as needed.

(4) Service was added March, 1969.

(5) N/A

Account Numbering System Preparation

(1) Considered and discussed in November, 1968.

(2) Participating were John C. Hilsen, Vice President; John Schaar, Manager, Information Systems Department; Robert J. St. Clair, Auditor; and William L. Hart, Vice President.

(3) Provide computer print-out on multilith plates for specific customer, Selectrite Systems, Inc., for account numbering system.

(4) Service was added January, 1969.

(5) N/A

Bank Credit Card

(1) Considered and discussed beginning in the Fall of 1966 with Arthur Kranzley Company survey--discussion resumed in Fall of 1967.

(2) Participating were Thomas L. Perko, Vice President; John C. Hilsen, Vice President; William L. Hart, Vice President; William K. Scammell, Jr., Vice President & Director; and Philip H. Stanton, President & Director.

(3) Provide a bank credit card.

(4) Service was added in July, 1968.

(5) N/A

Correspondent Installment Loan Processing

(1) Considered and discussed in January, 1971.

(2) Participating were John C. Hilsen, Vice President and Eldon B. Parten, Assistant Vice President.

(3) To process installment loans on computer with necessary print-outs, etc., for correspondent banks.

(4) Service was added July, 1971.

(5) N/A

Non-Bank General Ledger Processing

(1) Considered and discussed in July, 1971.

(2) Participating was John C. Hilsen, Vice President.

(3) To process General Ledger posting with necessary print-outs as required by non-bank bank customers.

(4) Service was added December, 1971.

(5) N/A

Professional Billing - Accounts Receivable

(1) Considered and discussed in January, 1969.

(2) Participating was John C. Hilsen, Vice President.

(3) To provide computer posting and handling of Accounts Receivables for doctors, dentists, etc.

(4) Service was added June, 1970.

(5) N/A

Correspondent Savings Account Processing

(1) Considered and discussed in July, 1969.

(2) Participating were Eldon B. Partch, Assistant Vice President and John C. Hilsen, Vice President.

(3) To process posting, interest computations, statements (etc.) for correspondent bank's savings accounts.

(4) Service was added February, 1970.

(5) N/A

Accounts Payable Processing

(1) Considered and discussed in January, 1970.

(2) Participating was John C. Hilsen, Vice President.

(3) To post and print out Accounts Payables for bank customers.

(4) Service was added April, 1970.

(5) N/A

Accounts Receivable Processing

(1) Considered and discussed in April, 1968.

(2) Participating was John C. Hilsen, Vice President.

(3) Processes Accounts Receivables for customers and provides print-outs, including aging, as required.

(4) Service was added February, 1969.

(5) N/A

Contract Programming

(1) Considered and discussed in January, 1968.

(2) Participating was John C. Hilsen, Vice President.

(3) Provides custom programming for bank customers, for computer use, on a contract basis.

(4) Service was added January, 1968.

(5) N/A

Record Master

(1) Considered and discussed in January, 1969.

(2) Participating was John C. Hilsen, Vice President.

(3) Provides computer distribution and print-outs of "Income and Expense" ledgers for customers.

(4) Service was added September, 1970.

(5) N/A

Interrogatory No. 23

State whether any officer, director, or employee of NBC solicited, during the years 1970 and 1971, the business of any customer or potential customer located in Spokane. As to each such solicitation, state:

(1) Date;
(2) Name and address of customer or potential customer solicited;
(3) Name of officer, director, or employee conducting the solicitation;
(4) The result of the solicitation.

ANSWER

Date	Name of Customer or Potential Customer	Name of Officer or Employee	Result of Solicitation
5-19-71	Spokane Industrial Park, Inc. N. 3808 Sullivan Road Spokane, Washington	Stephen D. Churchill Vice President	$4,100,000 real estate loan
3-9-71	Fidelity Mutual Savings Bank West 42nd and Riverside Avenue Spokane, Washington 99201	Edwin J. McWilliams President Earl Sorsdahl Vice President/Treasurer	No result
5-12-71 and 2 subsequent calls	Spokane City Treasurer Harry Bonck Spokane Municipal Building Spokane, Washington	Bert L. Sellin Vice President, Governmental Affairs	To clarify the services of the Fiscal Agency Dept. and seek cooperation of the City Treasurer in connection with the depositing of funds to cover redemption of bonds and coupons. NBofC was appointed Fiscal Agent for the State of Washington effective April 8, 1971. A satisfactory arrangement was worked out with the City Treasurer to have all funds directed to the Fiscal Agency Dept. for the redemption of all bonds and coupons issued by the City of Spokane
7-17-70	American Sign & Indicator Co. 2310 No. Fancher Way Spokane, Washington 99220	John M. Horne Vice President/Manager Walter F. Clift Vice President	Established relationship shortly thereafter

54

Int. 23
Schedule I
page 1

Date	Name of Customer or Potential Customer	Name of Officer or Employee	Result of Solicitation
9-70	Cascade Airways, Inc. Spokane International Airport Spokane, Washington 99219	Walter F. Clift Vice President Ronald L. Bosi Assistant Cashier	Checking account was opened. Credit was extended in 1971.
10-70	Thomas J. Faure Gonzaga University Spokane, Washington 99202	Gregory T. Faure	Savings account relationship with Crown Hill Branch
7-16-70	Columbia Electric & Supply Co. East 3420-Perry Avenue Spokane, Washington 99220	James Lockwood Vice President Robert Cummings Vice President Don H. Linderoth Manager	No result
11-18-71	Columbia Electric & Supply Co. East 3420-Perry Avenue Spokane, Washington 99220	Charles R. Chadwick Vice President William C. Estep Vice President Don H. Linderoth Manager	No result
12-28-71	Goofy's, Inc. West 340 Riverside Spokane, Washington 99201	Don H. Linderoth Manager	No result
Summer 1970	Mr. and Mrs. John Key 2826 West Hoffman Spokane, Washington Mr. Steve Lewis 2827 West Hoffman Spokane, Washington	Dave Key	No result

Date	Name of Customer or Potential Customer	Name of Officer or Employee	Result of Solicitation
12-71	Tall & Big Men's Shop West 914 First Avenue Spokane, Washington 99204	Michael Fleming Assistant Cashier	Obtained BankAmericard Merchant account
12-70	Black Angus Management Co., Inc. 200 West Second Seattle, Washington	Edward Pederson Assistant Manager	Obtained the BankAmericard account and deposit from the Spokane Black Angus Restaurant, in conjunction with balances obtained from the parent company out of Seattle
8-20-71	McCall Farm Chemical Subsidiary, Shell Oil Company	E.C. Workman Manager	No result
3-1-71	Spokane Water Softener, Inc.	Rich Lothian Assistant Cashier	No result
12-2-70	Mountain Distributors, Inc. West Trent Avenue Spokane, Washington	Jerry D. Gilbert Manager	No result
6-19-70	Merton L. Howard Spokane County Treasurer Medical Lake School District	Robert Cook	$100,000 deposit
1-14-71	Merton L. Howard Spokane County Treasurer Medical Lake School District	Robert Cook	$100,000 deposit

DEER PARK OFFICE

Date	Name of Customer or Potential Customer	Name of Officer or Employee	Result of Solicitation
3-11-70	Merton L. Howard Spokane County Treasurer Spokane County Court House Spokane, Washington	Ralph K. Holliday	Public Fund deposit of $100,000
4-23-70	Merton L. Howard Spokane County Treasurer	Ralph K. Holliday	No result
5-22-70	Merton L. Howard Spokane County Treasurer	Ralph K. Holliday	No result
6-23-70	Merton L. Howard Spokane County Treasurer	Ralph K. Holliday	No result
9-16-70	Joseph P. Delay Paulsen Building Spokane, Washington	Ralph K. Holliday	General solicitation No result
9-16-70	J. Donald Curran Paulsen Building Spokane, Washington	Ralph K. Holliday	General solicitation No result
9-24-70	Merton L. Howard Spokane County Auditor	Ralph K. Holliday	No result
12-22-70	Merton L. Howard Spokane County Auditor	Ralph K. Holliday	No result
12-22-70	Vern Ohland Spokane County Auditor Spokane County Court House Spokane, Washington	Ralph K. Holliday	No result

Int. 23
Schedule II
page 1

Date	Name of Customer or Potential Customer	Name of Officer or Employee	Result of Solicitation
12-22-70	Geo. Fallquist Spokane County Clerk Spokane County Court House Spokane, Washington	Ralph K. Holliday	No result
1-22-71	Merton L. Howard Spokane County Treasurer	Ralph K. Holliday	No result
2-16-71	Joseph P. Delay Paulsen Building Spokane, Washington	Ralph K. Holliday	No result
2-23-71	Merton L. Howard Spokane County Auditor	Ralph K. Holliday	No result
3-26-71	Merton L. Howard Spokane County Treasurer	Ralph K. Holliday	$500,000 Public Funds Certificate
5-25-71	Merton L. Howard Spokane County Treasurer	Ralph K. Holliday	No result
5-13-71	William & James Fox Fox Milling Company North Pines Road Spokane, Washington	Ralph K. Holliday	No result
7-23-71	Merton L. Howard Spokane County Treasurer	James E. Sherod	No result
8-16-72	James Russell 2820 McDonald Road Spokane, Washington	Ralph K. Holliday	Real Estate Loan

Date	Name of Customer or Potential Customer	Name of Officer or Employee	Result of Solicitation
9-15-71	Sunset West Realty and Mr. Carl Howes Builder Northtown Office Building Spokane, Washington	Ralph K. Holliday & James E. Sherod	No result
10-25-71	Merton L. Howard Spokane County Treasurer	Ralph K. Holliday	No result
11-10-71	Theodore M. Demars South 2615 Timberlane Dr. Veradale, Washington	Ralph K. Holliday	Checking & Savings Account
12-21-71	Merton L. Howard Spokane County Auditor	Ralph K. Holliday	No result
12-21-71	Vern Ohland Spokane County Auditor	Ralph K. Holliday	No result
12-21-71	George Fallquist Spokane County Clerk	Ralph K. Holliday	No result

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Interrogatory No. 30

(A) List each loan transaction in which WTB participated with other lenders during the period January 1, 1967 to date and the date of each such transaction.

(B) With respect to each loan transaction listed in answer to (A) state:

(1) The name and address of the borrower;
(2) The total amount of the credit;
(3) The name and address of each participating lender;
(4) The amount extended by each participating lender;
(5) The reasons for the participation arrangement;
(6) The interest rates charged by WTB and the participating lender.

ANSWER

Following is a list of borrowings in which WTB participated with other lenders during the period January 1, 1967 to date. The total credit in some instances represents a series of advances at different times. Where data is lacking, blank spaces appear.

Date	Name of Borrower	Address	Total Credit	Participating Lender		Partici-pating Lender	WTB	Reason	Interest Rate	
				Name	Address				Lender	WTB
1/67	Richardson Bros., Inc.	Quincy, Washington	$ 90,000	Security Bank of Washington	Ephrata, Washington	$ 50,000	$ 40,000	Overline	7 1/2%	7 %
1/67	Uniontown Co-op Assoc.	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 150,000	Overline	6 1/2%	6 %
1/67	Carl Manley	Ephrata, Washington		Security Bank of Washington	Ephrata, Washington		$ 10,000	Overline	8 %	7 1/2%
1/67	H & S Cattle Company	Ephrata, Washington		Security Bank of Washington	Ephrata, Washington		$ 140,000	Overline	7 1/2%	7 %
2/67	Handley & Peterson	Ephrata, Washington	$ 100,000	Security Bank of Washington	Ephrata, Washington	$ 70,000	$ 30,000	Overline	7 %	6 1/2%
2/67	Arvel Childs	Quincy, Washington	$ 103,662	Security Bank of Washington	Ephrata, Washington		$ 80,000	Overline		6 1/2%
2/67	Huston Farms, Inc.	Ephrata, Washington		Security Bank of Washington	Ephrata, Washington		$ 50,000	Overline		6 1/2%
3/67	Tommie Gooch	Uniontown, Washington	$ 9,100	Farmers State Bank	Uniontown, Washington	$ 7,100	$ 2,000	Overline	7 %	6 1/2%
3/67	Orrin Kambetsch	Uniontown, Washington	$ 11,000	Farmers State Bank	Uniontown, Washington	$ 8,500	$ 2,500	Overline	7 %	5 1/2%
3/67	Oda Brothers	Quincy, Washington	$ 137,094	Security Bank of Washington	Ephrata, Washington	$ 87,094	$ 50,000	Overline	6 1/2%	6 1/2%
4/67	J. P. Hermann	Uniontown, Washington	$ 12,000	Farmers State Bank	Uniontown, Washington	$ 8,000	$ 4,000	Overline	7 %	6 %

Date	Name of Borrower	Address	Total Credit	Participating Lender		Participating Lender	WTB	Reason	Interest Rate	
				Name	Address				Lender	WTB
4/67	Alfred Heitstuman	Uniontown, Washington	$ 14,000	Farmers State Bank	Uniontown, Washington	$ 12,000	$ 2,000	Overline	6 1/2%	6 %
4/67	Ray Dahm	Uniontown, Washington	$ 11,000	Farmers State Bank	Uniontown, Washington	$ 8,000	$ 3,000	Overline	6 1/2%	6 %
5/67	Dan Hay	Latah, Washington	$ 33,500	Bank of Latah	Latah, Washington		$ 6,000	Overline	7 1/2%	6 1/2%
5/67	Rathdrum Grain Growers	Rathdrum, Idaho		Farmers & Merchants	Rockford, Washington		$ 20,000	Overline		
7/67	Washington Water Power	Spokane, Washington	$10,000,000	Seattle-First National Bank	Seattle, Washington		$ 750,000	Participation	Prime	Prime
9/67	Uniontown Co-op Assoc.	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 150,000	Participation		6 %
9/67	Wayne Schwenne	Uniontown, Washington	$ 37,000	Farmers State Bank	Uniontown, Washington	$ 27,000	$ 10,000	Participation	7 %	6 %
10/67	Fairfield Grain Growers	Fairfield, Washington		Bank of Fairfield	Fairfield, Washington		$ 50,000	Participation	6 1/2%	6 %
10/67	Roy Taylor	Ephrata, Washington	$ 70,000	Security Bank of Washington	Ephrata, Washington	$ 59,000	$ 11,000	Participation	7 1/2%	6 1/2%
10/67	Western Cedar Products	Santa, Idaho	$ 90,000	Farmers & Merchants	Rockford, Washington	$ 40,000	$ 50,000	Participation	8 %	7 %
12/67	Howard Sachs	E. Wenatchee, Washington	$ 130,000	Security Bank of Washington	E. Wenatchee, Washington	$ 70,000	$ 60,000	Participation	6 3/4%	6 %
1/68	Richardson Bros.	Quincy, Washington	$ 100,000	Security Bank of Washington	E. Wenatchee, Washington	$ 50,000	$ 50,000	Participation	7 1/2%	7 %
1/68	Roy Hull	Ephrata, Washington	$ 90,000	Security Bank of Washington	E. Wenatchee, Washington	$ 45,000	$ 45,000	Participation		6 1/2%

Interrogatory 30
Overline Participation WTB 1-1-67 to date
page 2

Date	Name of Borrower	Address	Total Credit	Participating Lender Name	Participating Lender Address	Participating Lender	WTB	Reason	Interest Rate Lender	Interest Rate WTB
2/68	Verl Hodges	Ephrata, Washington	$ 350,000	Security Bank of Washington	E. Wenatchee, Washington	$ 75,000	$ 275,000	Participation	6 3/4%	6 1/2%
2/68	Floyd Barkhoff	Colton, Washington	$ 16,000	Farmers State Bank	Uniontown, Washington	$ 8,500	$ 7,500	Participation		6 1/2%
2/68	Arvel Child	Quincy, Washington	$ 121,750	Security Bank of Washington	Ephrata, Washington		$ 121,750		6 3/4%	6 1/2%
2/68	Keith Child	Quincy, Washington	$ 40,000	Security Bank of Washington	Ephrata, Washington	$ 20,000	$ 20,000	Participation	7 1/2%	7 %
3/68	Oda Brothers	Quincy, Washington	$ 120,000	Security Bank of Washington	Ephrata, Washington	$ 61,000	$ 59,000		6 3/4%	6 1/2%
3/68	J. P. Hermann	Uniontown, Washington	$ 15,000	Farmers State Bank	Uniontown, Washington	$ 8,500	$ 6,500	Participation	7 1/2%	7 %
4/68	Jacobs Farm	Uniontown, Washington	$ 18,500	Farmers State Bank	Uniontown, Washington	$ 8,500	$ 10,000	Participation	7 1/2%	7 %
4/68	Roy Taylor	Ephrata, Washington	$ 95,000	Security Bank of Washington	Ephrata, Washington	$ 70,000	$ 25,000	Participation	7 %	6 3/4%
5/68	R. C. Sheffels	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 55,000	Participation	6 1/2%	5 1/2%
5/68	Louis Sheffels	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 50,000	Participation	6 1/2%	5 1/2%
5/68	Ward Draper	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 21,000	Participation	6 1/2%	5 1/2%
5/68	Anderson & Sons	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 15,000		8 %	7 %
5/68	Clarence Bahr	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 30,000		7 %	6 1/2%

Date	Name of Borrower	Address	Total Credit	Participating Lender		Participating Lender	WTB	Reason	Interest Rate	
				Name	Address				Lender	WTB
5/68	Mr. Bergan	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 7,459		8	7
5/68	Crescent Vally	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 30,000		8	7
5/68	W. M. Crow	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 15,670		8	7
5/68	Richardson Bros., Inc.	Quincy, Washington	$ 120,000	Security Bank of Washington	Ephrata, Washington	$ 100,000	$ 20,000	Overline	7	
5/68	Eugene Heitstuman	Uniontown, Washington	$ 17,000	Farmers State Bank	Uniontown, Washington	$ 8,500	$ 8,500	Overline	7	6 1/2
5/68	Gil Sheffels	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 29,000	Overline	7	6 1/2
5/68	Jerald Shef[illegible]	Wilbur, Washing[illegible]		State Bank of Wilbur	Wilbur, Washington		$ 37,500	Overline	7	6 1/2
5/68	Violet Billingsley	Wilbur, Washing[illegible]		State Bank of Wilbur	Wilbur, Washington		$ 43,5[illegible]	Overline	7	6 1/2
6/68	Glen Whitelaw	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 25,200	Overline	7	6 1/2
6/68	Fred Weishaar	Wilbur, Washing[illegible]		State Bank of Wilbur	Wilbur, Washington		$ 18,500	Overline	7	6 1/2
6/68	Weishaar Bros.	Wilbur, Washing[illegible]		State Bank of Wilbur	Wilbur, Washington		$ 32,500	Overline	7	6 1/2
6/68	M. L. Weishaar	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 9,000	Overline	7	6 1/2
6/68	R. B. Williams	Almira, Washington		State Bank of Wilbur	Wilbur, Washington		$ 11,[illegible]0	Overline	8	7

Interrogatory 30.
Overline Participation WTB 1-1-67 to date
page 4

64

Date	Name of Borrower	Address	Total Credit	Participating Lender Name	Participating Lender Address	Participating Lender	WTB	Reason	Interest Rate Lender	Interest Rate WTB
6/68	Rice, Inc.	Spokane, Washington	$ 64,519	Farmers & Merchants	Rockford, Washington	$ 57,519	$ 7	Overline	8 %	7 %
6/68	Wiser & Wiser, Inc.	Quincy, Washington	$ 61,500	Security Bank of Washington	Ephrata, Washington	$ 31,500	$ [redacted]0,000	Overline	6 3/4%	6 1/2%
6/68	R. E. Toeus	Quincy, Washington	$ 76,000	Security Bank of Washington	Ephrata, Washington	$ 36,000	$ 40,000	Overline	6 3/4%	6 1/2%
6/68	John Toeus	Quincy, Washington	$ 43,000	Security Bank of Washington	Ephrata, Washington	$ 20,000	$ 23,000	Overline	6 3/4%	6 1/2%
6/68	Alois Neff	Quincy, Washington	$ 42,500	Security Bank of Washington	Ephrata, Washington	$ 22,500	$ 20,000	Overline	7 %	6 1/2%
6/68	C. M. Grant	Quincy, Washington	$ 53,500	Security Bank of Washington	Ephrata, Washington	$ 26,500	$ 25,000	Overline	7 %	6 1/2%
6/68	Koke Oda	Quincy, Washington		Security Bank of Washington	Ephrata, Washington		$ 13,000	Overline	7 %	6 1/2%
6/68	Washington Water Power	Spokane, Washington	$37,500,000	Seattle-First National Bank	Spokane, Washington		$ 800,000	Overline	Prime	Prime
6/68	Davenport Livestock Auction	Davenport, Washington		State Bank of Wilbur	Wilbur, Washington		$ 27,302			
6/68	Don Largent	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 20,000	Overline	7	%
6/68	Robert Sheffels	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 10,000	Overline		
6/68	Robert Nelson	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 25,000	Overline	7	%
6/68	E. Rosman	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 11,000	Overline	7	%

Interrogatory 30
Overline Participation WTB 1-1-67 to date
page 5

Date	Name of Borrower	Address	Total Credit	Participating Lender		Participating Lender	WTB	Reason	Interest Rat Lender	WTB
6/68	M. C. Ramm	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 35,000	Overline		7
7/68	Robert Draper	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 15,000	Overline	8	$ 7
7/68	Gilbert Sheffels	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 32,100	Overline		
7/68	Lester Wolf	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 10,500	Overline		
7/68	Valley Chamber of Commerce	Spokane, Washington	$ 80,000	Seattle-First National Bank	Spokane, Washington		$ 10,000	Policy	7	$ 6 3/4
7/68	Victor Clemons	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 20,000	Overline		
7/68	Max Kiner	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 7,000	Overline	8	$ 7
7/68	Glenn Anderson	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 5,000	Overline		
7/68	Robert Sheffels	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 10,000	Overline		
7/68	Grain Growers Warehouse Company	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 45,000	Overline	7	$ 6 1/2
7/68	Don Piper	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 34,500	Overline	7	$ 6 1/2
7/68	Jay Tee	Latah, Washington	$ 25,600	Bank of Latah	Latah, Washington	$ 4,600	$ 21,000	Overline	7	$ 6 1/2
7/68	Floyd Barkhuff	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 8,500	Sale Loan	7	$ 6 1/2

Interrogatory 30:
Overline Participation WTB 1-1-67 to date
page 6

Date	Name of Borrower	Address	Total Credit	Participating Lender		Participating Lender	WTB	Reason	Interest Rate	
				Name	Address				Lender	WTB
7/68	J. P. Hermann	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 7,834			6 1/2%
7/68	Jacob Farms	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 8,500			6 1/2%
7/68	Orrin Kambetsch	Uniontown, Washington	$ 12,000	Farmers State Bank	Uniontown, Washington	$ 3,500	$ 8,500	7	$ 6 1/2%	
7/68	Wayne Schwenne	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 8,000			6 1/2%
7/68	L. M. Wells	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 4,500			6 1/2%
7/68	Cornwall Machinery Company	Fairfield, Washington		Bank of Fairfield	Fairfield, Washington		$ 50,000	Overline	6 1/2%	6 1/4%
10/68	Roy Taylor	Ephrata, Washington	$ 150,000	Security Bank of Washington	Ephrata, Washington	$ 75,000	$ 75,000	Overline	6	$ 7 $
10/68	Uniontown Co-op	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 150,000	Overline		7 %
10/68	Victor Clemons	Wilbur, Washington	$ 10,000	State Bank of Wilbur	Wilbur, Washington		$ 10,000	Purchase Loan		7 %
10/68	Wayne Schwenne	Uniontown, Washington	$ 15,000	Farmers State Bank	Uniontown, Washington		$ 15,000	Overline	7	$ 7 %
11/68	Howard Sach	E. Wenatchee, Washington	$ 150,000	Security Bank of Washington	E. Wenatchee, Washington	$ 75,000	$ 75,000	Overline	7	$ 6 1/2%
11/68	Walter Chenault	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 29,346	Overline	8	$ 7 %
11/68	Fred Weishaar	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 24,400	Overline	7	$ 6 1/2%

Date	Name of Borrower	Address	Total Credit	Participating Lender Name	Participating Lender Address	Participating Lender	WTB	Reason	Interest Rate Lender	Interest Rate WTB
12/68	Richardson Bros.	Quincy, Washington	$ 105,000	Security Bank of Washington	Ephrata, Washington	$ 55,000	$ 50,000	Overline	7 1/2%	7 %
12/68	Western Cedar Company	Santa, Idaho		Farmers & Merchants	Rockford, Washington	-	$ 25,000	Overline	8 %	7 %
1/69	Roy Hull	Quincy, Washington	$ 122,000	Security Bank of Washington	Ephrata, Washington	$ 80,000	$ 42,000	Overline	7	%
1/69	L. M. Welle	Uniontown, Washington	$ 26,000	Farmers State Bank	Uniontown, Washington	$ 8,000	$ 18,000	Overline	7 1/2%	7 %
1/69	Lester Wolf	Uniontown, Washington	$ 15,000	Farmers State Bank	Uniontown, Washington	$ 8,500	$ 6,500	Overline	7 %	6 3/4%
2/69	Oda Bros.	Quincy, Washington	$ 114,000	Security Bank of Washington	Ephrata, Washington	$ 64,000	$ 50,000	Overline	7 1/4%	7 %
2/69	T & T Farms	Quincy, Washington	$ 133,600	Security Bank of Washington	Ephrata, Washington	$ 80,600	$ 53,000	Overline	7 1/4%	7 %
2/69	Orrin Kambitsch	Uniontown, Washington	$ 14,000	Farmers State Bank	Uniontown, Washington	$ 8,500	$ 5,500	Overline	7 1/2%	7 %
3/69	Fred Weishaar	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 71,603	Overline	8 %	7 %
3/69	H. White	Wilbur, Washington	$ 10,000	State Bank of Wilbur	Wilbur, Washington		$ 10,000	Overline		7 %
3/69	Martin Hendricksen	Uniontown, Washington	$ 40,100	Farmers State Bank	Uniontown, Washington	$ 35,100	$ 5,000	Overline		7 %
3/69	Arvel Child	Quincy, Washington	$ 75,000	Security Bank of Washington	Ephrata, Washington		$ 75,000	Overline	7 1/4%	7 1/4%
3/69	Ardean Child	Quincy, Washington	$ 46,000	Security Bank of Washington	Ephrata, Washington	$ 21,000	$ 25,000	Overline	8 %	7 1/2%

Interrogatory 30
Overline Participation WTB 1-1-67 to date
page 8

Date	Name of Borrower	Address	Total Credit	Participating Lender		Participating Lender	WTB	Reason	Interest Rate	
				Name	Address				Lender	WTB
3/69	Veral Hodges	Ephrata, Washington		Security Bank of Washington	Ephrata, Washington		$ 360,000	Overline		7 1/2%
4/69	Bill Pendrey	Garfield, Washington		State National Bank of Garfield	Garfield, Washington		$ 5,000	Overline	8	7 1/2%
4/69	Clarence Bahr	Wilbur, Washington		Bank of Wilbur	Wilbur, Washington		$ 17,500	Overline	8	7 1/2%
4/69	Creascent Valley Ranch	Wilbur, Washington		Bank of Wilbur	Wilbur, Washington		$ 50,000	Overline	8	7 1/2%
4/69	Ray Dahmen	Uniontown, Washington	$ 10,600	Farmers State Bank	Uniontown, Washington	$ 9,500	$ 1,100	Overline	7 1/4%	7 1/4%
4/69	Jacob Farms	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 6,000	Overline	7 1/2%	7 1/4%
4/69	W. M. Kinger	Uniontown Washington		Farmers State Bank	Uniontown, Washington		$ 2,500	Overline	7 1/2%	7 1/4%
4/69	Ralph Emtman	Fairfield Washington		Bank of Fairfield	Fairfield, Washington		$ 15,000	Overline	7 1/2%	7 1/4%
4/69	Munson Nash & Futrell & Assoc.	Wenatchee, Washington	$ 110,000	Security Bank of Washington	E. Wenatchee, Washington	$ 80,000	$ 30,000	Overline		8 %
5/69	Morris Sachs	Wenatchee, Washington	$ 125,000	Security Bank of Washington	E. Wenatchee, Washington	$ 80,000	$ 45,000	Overline	7 1/2%	7 1/4%
5/69	Roy Taylor	Wenatchee, Washington	$ 200,000	Security Bank of Washington	E. Wenatchee, Washington	$ 80,000	$ 120,000	Overline	8 1/2%	8 %
5/69	Robert Sheffels	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 25,000	Overline	7 1/2%	7 1/2%
5/69	Albert Morgan	Latah, Washington		Bank of Latah	Latah, Washington		$ 6,000	Overline	8	% 7 1/2%

Interrogatory 30
Overline Participation WTB 1-1-67 to date
page 9

Date	Name of Borrower	Address	Total Credit	Participating Lender Name	Participating Lender Address	Participating Lender	WTB	Reason	Interest Rate Lender	Interest Rate WTB
5/69	R. C. Sheffels	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 25,000	Overline	8	7 1/2%
6/69	Leonard Eberle	Latah, Washington		Bank of Latah	Latah, Washington		$ 15,600	Overline	7 1/2%	7 1/4%
6/69	James Maddon	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 12,000	Overline	8	7 1/2%
6/69	Clarence Bahr	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 15,200	Overline	8	8
6/69	Glen Anderson	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 20,000	Overline	8	8
6/69	Herman Rux	Wilbur, Washington		State Bank of Wilbur	Wilbur, Washington		$ 4,000	Overline	9	8 1/2%
6/69	Ben Thompson/Thompson Tile	Spokane, Washington		Farmers & Merchants	Rockford, Washington		$ 20,000	Overline	9	8 1/2%
7/69	Ralph Emtman	Fairfield, Washington		Bank of Fairfield	Fairfield, Washington		$ 15,000	Overline	7 1/2%	7 1/4%
7/69	Walter Scheel	Fairfield, Washington		Bank of Fairfield	Fairfield, Washington		$ 25,000	Overline	8	7 1/2%
7/69	J. H. Clausen	Fairfield, Washington		Bank of Fairfield	Fairfield, Washington		$ 25,000	Overline	8	7 1/2%
7/69	Washington Water Power	Spokane, Washington	$10,000,000	Seattle-First National Bank	Spokane, Washington		$ 850,000	Overline	Prime	Prime
11/69	Wayne Schwenne	Uniontown, Washington	$ 30,000	Farmers State Bank	Uniontown, Washington	$ 15,000	$ 15,000	Overline	8	7 1/2%
12/69	Melvin Finnell	Uniontown, Washington	$ 24,000	Farmers State Bank	Uniontown, Washington	$ 15,000	$ 9,000	Overline	8	7 1/2%

Date	Name of Borrower	Address	Total Credit	Participating Lender		Participating Lender	WTB	Reason	Interest Rate	
				Name	Address				Lender	WTB
12/69	Richardson Bros.	Ephrata, Washington	$ 200,000	Security Bank of Washington	Ephrata, Washington	$ 120,000	$ 80,000	Overline	9 1/2%	9 %
12/69	Jay Peterson	Ephrata, Washington	$ 215,000	Security Bank of Washington	Ephrata, Washington	$ 111,000	$ 104,000	Overline	9 1/2%	9 %
12/69	Oda Bros.	Ephrata, Washington	$ 138,000	Security Bank of Washington	Ephrata, Washington	$ 118,000	$ 20,000	Overline	8 3/4%	8 1/2%
1/70	Service Boat Company	Kalispell, Montana	$ 40,000	Valley Bank of Kalispell	Kalispell, Montana		$ 40,000	Overline	8 3/4%	8 1/4%
2/70	Verle Hodges	Quincy, Washington	$ 400,000	Security Bank of Washington	Ephrata, Washington	$ 105,000	$ 295,000	Overline	9 %	8 3/4%
2/70	L. M. Welle	Uniontown, Washington	$ 26,500	Farmers State Bank	Uniontown, Washington	$ 15,000	$ 11,500	Overline	9 %	8 1/2%
3/70	Arcade Building & Realty Company	Seattle, Washington	$ 3,250,000	Seattle Trust & Savings	Seattle, Washington	$3,000,000	$ 250,000	Overline	10 ¼ %	10 ¼ %
3/70	Gordon Lederer	Latah, Washington		Bank of Latah	Latah, Washington		$ 4,300	Overline	9 %	8 1/2%
3/70	Oren Kambitsch	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 2,200	Overline	9 %	8 1/2%
3/70	Veryl Hensen	Uniontown, Washington	$ 18,500	Farmers State Bank	Uniontown, Washington	$ 14,500	$ 4,000	Overline	8 %	8 %
3/70	Floyd Barkhuff	Uniontown, Washington	$ 21,000	Farmers State Bank	Uniontown, Washington	$ 14,000	$ 7,000	Overline	9 %	8 1/2%
3/70	Roy Taylor	Wenatchee, Washington	$ 200,000	Security Bank of Washington	E. Wenatchee, Washington	$ 120,000	$ 80,000	Overline	8 3/4%	8 1/2%
4/70	Ralph Emtman	Fairfield, Washington		Bank of Fairfield	Fairfield, Washington		$ 17,000	Overline	9 1/2%	9 %

Date	Name of Borrower	Address	Total Credit	Participating Lender Name	Participating Lender Address	Participating Lender	WTB	Reason	Interest Rate Lender	Interest Rate WTB
4/70	Munson - Nash	Wenatchee, Washington	$ 200,000	Security Bank of Washington	E. Wenatchee, Washington	$ 120,000	$ 80,000	Overline	9 1/4%	8 3/4%
5/70	Arvel Child	Quincy, Washington	$ 124,200	Security Bank of Washington	Ephrata, Washington	$ 104,200	$ 20,000	Overline	8 3/4%	8 3/4%
5/70	John Whitelaw	Grand Coulee, Washington		Security Bank of Washington	Ephrata, Washington		$ 40,000	Overlind	9	%
6/70	Charles Kero	Fairfield, Washington		Bank of Fairfield	Fairfield, Washington		$ 30,000	Overline	9	%
6/70	Blue Ribbon Potato	Quincy, Washington	$ 30,000	Security Bank of Washington	Ephrata, Washington	$ 15,000	$ 15,000	Overline	9 1/2%	9 %
7/70	Oda Bros.	Quincy, Washington		Security Bank of Washington	Ephrata, Washington		$ 7,500	Overline	8 3/4%	8 1/2%
7/70	Washington Water Power	Spokane, Washington	$10,000,000	Seattle-First National Bank	Spokane, Washington		$ 850,000	Overline	Prime	Prime
9/70	Kikuchi Bros.	Quincy, Washington	$ 135,000	Security Bank of Washington	Ephrata, Washington	$ 120,000	$ 15,000	Overline	9 1/2%	9 %
9/70	State Center Produce, Inc.	Quincy, Washington	$ 145,000	Security Bank of Washington	Ephrata, Washington	$ 120,000	$ 25,000	Overline	8 3/4%	8 3/4%
9/70	Roy Hull	Ephrata, Washington	$ 161,000	Security Bank of Washington	Ephrata, Washington	$ 131,000	$ 30,000		8 1/2%	8 1/4%
10/70	Uniontown Co-op	Uniontown, Washington		Farmers State Bank	Uniontown, Washington		$ 150,000		8 %	7 1/2%
10/70	John Summers	Uniontown, Washington	$ 30,500	Farmers State Bank	Uniontown, Washington	$ 16,500	$ 14,000		9 %	8 1/2%
12/70	Futrell & Assoc., Inc.	Wenatchee, Washington	$ 175,000	Security Bank of Washington	E. Wenatchee, Washington	$ 120,000	$ 55,000		9 1/4%	8 3/4%

Date	Name of Borrower	Address	Total Credit	Participating Lender		Participating Lender	WTB	Reason	Interest Rate Lender	Interest Rate WTB
12/70	Richardson Bros.	Quincy, Washington	$ 150,000	Security Bank of Washington	Ephrata, Washington	$ 120,000	$ 100,000		9 1/2%	9 %
12/70	Jay Peterson	Ephrata, Washington	$ 225,000	Security Bank of Washington	Ephrata, Washington	$ 125,000	$ 120,000		9 1/4%	9 %
1/71	Lindell Broadfoot d/b/a Western Cedar Products	Santa, Idaho	$ 100,000	Farmers & Merchants	Rockford, Washington	$ 50,000	$ 50,000	Overline	10 %	9 %
1/71	Kikuchi Bros.	Quincy, Washington	$ 131,000	Security Bank of Washington	Ephrata, Washington	$ 91,000	$ 40,000	Overline	9 1/2%	9 %
1/71	Spokane Club	Spokane, Washington	$ 125,000	Seattle-First National Bank	Spokane, Washington	$ 50,000	$ 20,000	Participation	9 1/2%	9 1/2%
				Old National Bank	Spokane, Washington	$ 40,000		Participation	9 1/2%	
				American Commercial Bank	Spokane, Washington	$ 2,500		Participation	9 1/2%	
				First National Bank	Spokane, Washington	$ 8,750		Participation	9 1/2%	
1/71	Jay Tee	Latah, Washington		Bank of Latah	Latah, Washington		$ 10,000	Overline	8 %	
1/71	Veral Henson	Uniontown, Washington	$ 24,500	Farmers State Bank	Uniontown, Washington	$ 16,500	$ 8,000	Overline	8 1/2%	8 %
1/71	T & T Farms	Quincy, Washington	$ 160,000	Security Bank of Washington	Ephrata, Washington	$ 120,000	$ 40,000	Overline	8 1/4%	7 3/4%
1/71	Pullman Grange Supply, Inc.	Pullman, Washington	$ 160,000	Bank of Pullman	Pullman, Washington	$ 100,000	$ 60,000	Overline		
1/71	Oda Bros.	Quincy, Washington	$ 200,000	Security Bank of Washington	Ephrata, Washington	$ 100,000	$ 100,000	Overline	8 1/4%	7 3/4%
1/71	Veral E. Hodges	Quincy, Washington	$ 412,500	Security Bank of Washington	Ephrata, Washington	$ 47,500	$ 365,000	Overline	8 1/2%	8 %

Date	Name of Borrower	Address	Total Credit	Participating Lender		Participating Lender	WTB	Reason	Interest Rate	
				Name	Address				Lender	WTB
2/71	Keith Childs	Quincy, Washington	$ 155,000	Security Bank of Washington	Ephrata, Washington	$ 125,000	$ 30,000	Overline	9 1/2%	9 %
2/71	Floyd Barkhuff	Colton, Washington	$ 23,500	Farmers State Bank	Uniontown, Washington	$ 16,000	$ 7,500	Overline	9	8 1/2%
2/71	Dan E. Hay	Tekoa, Washington	$ 65,000	Bank of Latah	Latah, Washington	$ 53,000	$ 12,000	Overline	8 1/2%	8 %
2/71	Roy Taylor	Wenatchee, Washington	$ 250,000	Security Bank of Washington	E. Wenatchee, Washington	$ 135,000	$ 115,000	Overline	8	7 1/2%
3/71	Cusicks, Inc.	Wenatchee, Washington	$ 188,000	Security Bank of Washington	E. Wenatchee, Washington	$ 123,000	$ 65,000	Overline	8	7 1/2%
3/71	Riverview Mobile Parks, Inc.	Pullman, Washington	$ 100,000	Bank of Pullman	Pullman, Washington	$ 40,000	$ 60,000	Overline	9	8 1/2%
3/71	Arvel Childs	Quincy, Washington	$ 124,000	Security Bank of Washington	Ephrata, Washington	$ 64,000	$ 60,000	Overline	8	7 1/2%
5/71	Reed Webb	Ephrata, Washington	$ 155,000	Security Bank of Washington	Ephrata, Washington	$ 25,000	$ 130,000	Overline	9	8 1/2%
6/71	Ray Dahm	Uniontown, Washington	$ 17,000	Farmers State Bank	Uniontown, Washington	$ 4,000	$ 13,000	Overline	8 1/4%	8 %
6/71	Wayne Schwenne	Uniontown, Washington	$ 37,500	Farmers State Bank	Uniontown, Washington	$ 16,500	$ 21,000	Overline	8 1/2%	8 %
6/71	N. A. Degerstrom, Inc.	Spokane, Washington	$ 1,600,000	National Bank of Commerce	Seattle, Washington	$ 350,000	$1,250,000	Overline		
10/71	The Sumitomo Bank, Ltd., New York Agency	New York, New York	$ 6,500,000	National Bank of Commerce	Seattle, Washington	Unknown	$1,000,000	Participation		
11/71	N. A. Degerstrom, Inc.	Spokane, Washington	$ 1,800,000	National Bank of Commerce	Seattle, Washington	$ 550,000	$1,250,000	Overline		

Interrogatory 30
Over... Participation WTB 1-1-67 to date
page 14

14

Interrogatory No. 33

(A) State the name and address of each applicant during the period January 1, 1967 to date who requested a (1) loan or (2) line of credit from NBC or WTB in an amount in excess of its legal lending limit as of the date of such request.

(B) With respect to each applicant listed in answer to (A) state:

(1) The amount of credit requested and date of request;

(2) Whether NBC or WTB extended any portion of the credit requested in participation with another lender or lenders and, if so, the names and addresses of such other lenders and the portion of the credit extended by each participating lender.

INTERROGATORY 33

ANSWER

REQUESTS FOR LOANS IN EXCESS OF WTB LEGAL LIMIT SINCE 1-1-67 FOR CUSTOMERS WILLING TO PERMIT PARTICIPATION WITH OTHER BANKS

(A)				(B)			
				Participating Lender			
Name	Address	Amount Of Credit	Date Of Request	Name	Address	Lender's Portion	WTB
H & M Investment Company	Spokane, Washington	$1,000,000	3-13-67	Seattle Trust & Savings	Seattle, Washington	$ 200,000	$ 800,000
N. A. Degerstrom, Inc.	Spokane, Washington	$ 914,200	5-10-67	Seattle Trust & Savings	Seattle, Washington	$ 114,200	$ 800,000
" " " "	"	$1,034,000	2-16-68	" " " "	"	$ 234,000	$ 800,000
Idapine Mills, Inc.	Grangeville, Idaho	$1,186,000	2-3-69	U. S. National Bank	Portland, Oregon	$ 386,000	$ 800,000
" " "	"	$2,000,000	8-25-69	" " " "	"	$ 750,000	$1,275,000
Hedlund Lumber Company	Sandpoint, Idaho	$ 950,000	6-69	Seattle Trust & Savings	Seattle, Washington	$ 100,000	$ 850,000
Pack River Compar	Spokane, Washington	$2,750,000	8-8-69	Chase Manhattan Bank	New York, New York	$1,000,000	$1,275,000
Nelson-Lydig, Inc.	Spokane, Washington	$1,845,000	12-30-70	National Bank of Commerce	Seattle, Washington	$ 595,000	$1,250,000
" " "	"	$1,480,000	8-16-71	" " " "	"	$ 350,000	$1,130,000
N. A. Degerstrom, Inc.	Spokane, Washington	$1,600,000	6-71	National Bank of Commerce	Seattle, Washington	$ 350,000	$1,250,000
" " " "	"	$1,800,000	11-71	" " " "	"	$ 550,000	$1,250,000
Murphy Bros., Inc.	Spokane, Washington	$ 950,000	3-67	Seattle Trust & Savings	Seattle, Washington	$ 150,000	$ 800,000

INTERROGATORY 33
(000 Omitted)

Name & Address of Borrower	Name & Address of Participants	Original Date of Request	Final Maturity	Total Original Commitment	Original NB of C Share	Original Participants Share	Comments
I.P.Callison & Sons Inc. Lloyd Bldg.,Seattle	Old National Bank P.O.Box 1516,Spokane	9-8-66	9-8-67	5300	4300	1000	Usage kept within NB of C's share Borrowing Arrangement for year.
Same	Bank of America National Division, San Francisco Headquarters, Bank of America Center San Francisco, Calif.	7-18-67	7-18-68	7300	4700	2600	Borrowing arrangement for one year. Maximum usage was in November 1967 with Bank of America share $2,600,000
Same	Same	8-29-68	8-29-69	6200	4700	1500	Borrowing arrangement for year. High usage was in October & November with $201,600 sold to Bank of America
Twin City Foods P.O.Box 98 Stanwood, Wash.	Security-1st Nat'l Bank Head Office 561 S. Spring St. Los Angeles, Calif.	6-29-67	6-29-68	7000	4500	2500	Borrowing arrangement for year. High usage was in January with $2,500,000 sold to Security First National Bank.
	Security Pacific 561 S. Spring St. Los Angeles	9-19-68	6-19-69	7000	4500	2500	Borrowing arrangement for 9 months. High usage was in December with $1,500,000 sold to Security Pacific Bank.
	Same	7-10-69	6-16-70	6000	4500	1500	Borrowing arrangement includes $2,900,000 term loan. High usage was in January with $500,000 sold to Security Pacific Bank

Interrogatory 33 - NBC
page 1

77

INTERROGATORY 33
(000 Omitted)

Name & Address of Borrower	Name & Address of Participants	Original Date of Request	Final Maturity	Total Original Commitment	Original NB of C Share	Original Participants Share	Comments
Ward's Cove Packing Co. 88 E. Hamlin St., Seattle	Security Pacific 561 S.Spring Los Angeles, Calif.	3-5-70	3-5-71	10000	5000	5000	Borrowing arrangement for year with participating agreement being released in November for lack of need. September high of $5,000,000 was all carried by NB of C
Whitney-Fidalgo Seafoods 2360 W.Commodore Way Seattle	Security 1st National 561 S. Spring Los Angeles, Calif.	7-14-66	7-14-67	7500	4400	3100	Borrowing arrangement for year. High usage was in November with $1,100,000 sold to Security First National Bank
Same	Same	7-27-67	7-27-68	7400	4700	2700	Borrowing arrangement for year. High usage was in October with $500,000 sold to Security First National Bank
Same	Security Pacific (same) (as above)	6-27-68	6-27-69	7500	4700	2800	Borrowing arrangement for year. High usage was in December with $1,450,000 sold to Security First National Bank
Same	Same	7-3-69	7-3-70	6500	4500	200	Borrowing arrangement includes $2,000,000 term loan. High usage was in November with no need to use overline.
Same	Bank of America Bank of America Center San Francisco, Calif.	6-25-70	6-25-71	15000	3000	12000	Borrowing arrangement for year. High usage was in October with $6,255,000 sold to Bank of America.

INTERROGATORY 33
(000 Omitted)

Name & Address of Borrower	Name & Address of Participants	Original Date of Request	Final Maturity	Total Original Commitment	Original NBofC Share	Original Participants Share	Comments
Kawasaki Aircraft Company Tokyo, Japan	Seattle First Head Office- 1001-4th Ave. Seattle, Wash.	3-4-65	5-8-69	5750	1000		Term Loan--all used Seattle-First $1,000
	Pacific National 900-2nd Ave. Seattle, Wash.						Pacific National- $875
	Peoples National 1414 - 4th Ave. Seattle, Wash.						Peoples - $875
	Philadelphia National Philadelphia, Penn. (Broad & Chestnut Streets)						Philadelphia National- $1,000
	Provident National Broad & Chestnut Sts. Philadelphia, Penn.						Provident National- $1,000
Same	Same	12-26-67	1-19-71	5750	1000	4750	Term loan-all used Participation on same basis

Interrogatory No. 34

State whether any commercial bank has, since January 1967, refused to participate in all or in part of any loan originated by (A) NBC and (B) WTB. If the answer is affirmative, state for each such refusal:

(1) The name of the refusing bank and whether such bank is now or was at the time of the refusal correspondent of NBC or WTB;

(2) The date of the refusal and the reasons for the refusal to the extent they are known;

(3) The name and address of the loan applicant and the amount and purpose of the loan requested;

(4) Whether the applicant's needs were satisfied elsewhere, and if so, by whom.

Answer

For NBC: Yes, on two occasions.

FIRST:

1. Crocker-Citizens National Bank was and is now a correspondent bank of NBofC. Since the declination, our correspondent has changed its corporate name to Crocker National Bank.

2. Date of refusal: June 18, 1970. Refusal was never in writing.

   A. Reasons:

      (1) Correspondent bank's tight money position

      (2) Financial statement proportions

3. Whitney-Fidalgo Seafoods, Inc.
   2360 West Commodore Way
   Post Office Box 4008
   Seattle, Washington

   A. Amount requested: $15,000,000

   B. Working Capital

4. The credit was approved as a participation between NBofC and Bank of America, N.T. & S.A., San Francisco, California.

SECOND:

1. Bank of America, N.T. & S.A., San Francisco, California

   A. Bank of America was and is now a correspondent bank of National Bank of Commerce.

2. Date of refusal: Approximately June 11, 1971. Refusal never in writing.

   A. Reasons:

      (1) Capital expenditures which lowered the company's working capital. This was a violation of the 1970 loan agreement.

      (2) Financial statement proportions.

(3) Collateral strain.

(4) Some concern for management for allowing capital expenditures.

3. Whitney-Fidalgo Seafoods, Inc.
2360 West Commodore Way
Post Office Box 4008
Seattle, Washington

A. Amount requested: $15,000,000

B. Working Capital

4. The customer obtained financing from Seattle-First National Bank, Seattle, Washington, at which time NBofC lost the relationship.

For WTB:

(1) The U.S. National Bank of Oregon, Portland, Oregon, a correspondent of WTB, refused to participate in part of a loan originated by the Washington Trust Bank to Idapine Mills, Inc. on August 18, 1969. The amount of credit involved was $1,000,000. The purpose was to enable the borrower to cut timber under U.S. Forest Service timber contracts before an increase in costs was to come into effect. The applicant's needs were ultimately satisfied by the U.S. National Bank of Oregon on a direct basis because the principals of the corporation, who live in Portland, called upon the senior management of the bank and made the request.

(2) Chase Manhattan Bank, a correspondent of WTB, refused to increase their line of credit to the Pack River Company in November, 1969. The bank indicated WTB had used up its call upon them for correspondent loans. Loan applicant was Pack River Company, Spokane, Washington. Purpose of the loan was to replenish working capital and inventory logs. Amount requested was $1,000,000. Owners of the business were able to raise a portion of the needed funds on a personal basis.

Interrogatory No. 40

(A) List each formal and informal application made by NBC or WTB to any bank regulatory agency during the period January 1, 1960 to date for approval to establish a de novo banking office in Spokane County.

(B) With respect to each application listed in answer to (A) state:

(1) Date of the application, indicating whether formal or informal;

(2) Location of the office for which approval was sought;

(3) Whether the application was approved;

(4) If denied, reasons given by the regulatory agency for denying the application or inquiry;

(5) Whether and when the office was opened for business;

(6) The annual operating profits or losses for each office opened for business from the date of opening to date.

(C) State whether, from January 1, 1960 to date, any officer or committee of (1) NBC and (2) WTB has considered establishing any de novo banking offices in Spokane County in addition to those listed in answer to (A).

(D) If the answer to (C) is affirmative state:

(1) Each location considered for an office;

(2) The period of time during which consideration was given to establishing each such office;

(3) The reasons for considering the establishment of an office at each location;

(4) The reasons why application was not made to a bank regulatory agency for approval to establish each such office.

ANSWER

Interrogatory 40

(A) The following applications were made by WTB to bank regulatory agencies during the period January 1, 1960 to date for approval to establish de novo banking offices in Spokane County:

1. Northtown Drive-In Branch
2. Opportunity Pines Drive-In Branch
3. South Hill Drive-In Branch

(B) On the dates shown below, the following formal applications were made:

1. Northtown Drive-In Branch—November 27, 1961
2. Opportunity Pines Drive-In Branch—June 16, 1966
3. South Hill Drive-In Branch—June 24, 1968 (extension—August 6, 1969)

Informal applications were made for Opportunity Pines and South Hill on November 29, 1962 and were returned by the State Regulatory Agency on February 13, 1964 as inactive.

(2) Following are the location of the banking offices for which approval was sought in the above application:

Northtown Drive-In Branch
Northtown Office Building
North 4401 Division Street
Spokane, Washington 99205
Opportunity Pines Drive-In Branch
North 100 Pines Road
Spokane, Washington 99206
South Hill Drive-In Branch
East 611 - 31st Avenue
Spokane, Washington 99203

(3) All formal applications indicated above were approved.

(4) No applications were denied.

(5) Following are the offices and dates they opened for business:

Northtown Drive-In Branch—February 25, 1963
Opportunity Pines Drive-In Branch—August 4, 1967
South Hill Drive-In Branch—January 13, 1970

(6) The annual operating profit (loss) for each office opened for business per above from the date of opening to date is shown below. The accounting conventions followed are noted in the footnotes in the answer to Interrogatory No. 58 and in general should not be regarded as being actual operating profits or losses because of difficulties in allocating income and expenses for main office or head office activities in previous years:

Northtown Drive-In Branch

1963 thru 1965—not available
1966—$ 23,718.62
1967—$ 47,484.97
1968—$ 91,041.70
1969—$107,719.00
1970—$ 76,522.07
1971—$ 15,686.92

Opportunity Pines Drive-In Branch

1967—($23,668.99) Loss
1968—($27,469.40) Loss
1969—($ 7,362.65) Loss
1970—($ 867.48) Loss
1971— $10,121.57

South Hill Drive-In Branch

1970—($79,371.80) Loss
1971—($71,831.28) Loss

(C) During the period January 1, 1960 to date, WTB has considered establishing de novo banking offices in Spokane County in addition to those listed above.

(D) (1) The following areas have been considered suitable for de novo banking offices:

1) Far North of Spokane
2) Shadle Park District
3) In the area of Cheney, Washington
4) Wellesley Avenue, between Maple & Ash—Spokane
5) Baldwin & Ruby—Spokane

(2) As follows:

1) Far North of Spokane—1968
2) Shadle Park District—April, 1960
3) Cheney, Washington—Prior to 1-68
4) Wellesley Avenue—August, 1969
5) Baldwin & Ruby—April, 1970

(3) The reasons for considering establishment of offices at the above locations were as follows:

1) *Far North of Spokane*—Growth in population of area and expanding shopping center.
2) *Shadle Park District*—Large shopping center and growth in population to the northwest.
3) *Cheney, Washington*—The continued growth in Eastern Washington State College.
4) *Wellesley Avenue*—Maple & Ash one way street feed from far north side of Spokane which has continued its growth and growth in professional and small retail buildings.
5) *Baldwin & Ruby*—Growth in small business; large area within one mile of branch location, zoned for manufacturing and warehousing; rapid growth in bank deposits in market area, and in excess of five square blocks, rezoned for residence office from multifamily residence.

(4) Applications were not made to bank regulatory agencies for approval to establish the above offices for the following reasons:

1) *Far North of Spokane*—First National Bank of Spokane opened a branch office in Five Mile Shopping Center and the area could not support two banking offices.
2) *Shadle Park District*—After complete investigation, we found at that time the area could not support two banking offices.
3) *Cheney, Washington*—It was felt that the present and future growth potential did not exist to support another banking office and WTB would not have been permitted to locate a branch within the corporate city limits of Cheney.

4/5) *Wellesley Avenue/Baldwin & Ruby*—Investigation was underway for information to make application for these two offices and was put aside after the announcement of our intent to merge with NBC.

Interrogatory No. 48

(A) For the period January 1, 1955 to date state whether (1) Marine or its directors, officers, employees, or other agents, or the directors, officers, employees, or other agents of (2) NBC or (3) WTB hold or have held options to purchase stock of any Washington bank or of any corporation which holds or controls 3% or more of the stock of a Washington bank.

(B) If the answer to (A) is affirmative, state:

(1) The name and position of the holder of the option;
(2) The name and location of the bank or corporation on whose stock the option is held;
(3) The name, position, and address of the grantor of the option;
(4) The terms and conditions of the option.

DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES

Answers to Interrogatory 48

For Marine and NBC:

So far as is known to its management, for the period January 1, 1955 to date, Marine Bancorporation and its subsidiaries and the directors, officers, employees, or other agents thereof have not held options to purchase stock of any Washington bank or of any corporation which holds or controls 3% or more of the stock of any Washington bank. If such options are or have been held, it was without the knowledge of management of Marine Bancorporation or its subsidiaries and would be held as private investments.

For WTB:

On the first day of December, 1965, WTB loaned R. L. Goedde $51,000 at six percent (6%) annual interest to be repaid in monthly installments of $500 per

month. R. L. Goedde is the Vice President and Cashier of Farmers State Bank of Uniontown at Uniontown, Washington, and the owner of 171 shares, which constitutes 66.8% of its capital stock. The purpose of the loan was to allow Goedde to purchase 135 shares of Farmers State Bank of Washington from the Estate of Herman G. Cordes and another five (5) shares from Martha Cordes. To secure the loan from WTB, Goedde pledged the said 171 shares together with some life insurance, pursuant to the terms of a pledge agreement which grants to WTB a right of first refusal to purchase the stock. WTB was also entitled to representation with one director on the bank's board of directors. The pertinent paragraph reads as follows:

> That during the term of this loan, or for a period of ten (10) years from and after the date of this agreement, whichever occurs last, if the Borrower or their heirs, executors, administrators or assigns, receive, from time to time, a bona fide offer to purchase all or any part of their stock of the Farmers State Bank, Uniontown, Washington, and such offer to purchase is satisfactory to the Borrower, said Borrower or their heirs, executors, administrators or assigns shall immediately notify the Bank of said offer by Registered Mail at its Main Office and the Borrower or their heirs, executors, administrators or assigns agree to sell said stock to a person named by the Bank at the price and on the terms of the offer so made, said notice shall require the person so named, if it desires to exercise said right to purchase, to make said purchase within 10 days after such notice is received.

WTB also holds a right of first refusal to purchase 5,817 shares, which constitutes 29.085% of the capital stock of Security Bank of Washington at Ephrata, Washington. Gordon R. Fletcher, a Vice President and Director of the Security Bank of Washington died owning 29.085% of the bank's capital stock. To pay death taxes, costs of administration, and other obligations of the estate, it was necessary to sell the decedent's stock in the

Ephrata bank. To prevent this stock from falling into the hands of strange or unfriendly owners, William Wolford, President of the bank, arranged for a group of fourteen, all of whom were employees or officers of the bank, to purchase from the Fletcher estate these shares. To finance the purchase, Wolford arranged with WTB for a loan of $698,250 which is secured by a pledge agreement which includes a right of first refusal on the part of WTB to purchase the stock. The names and addresses of these borrowers, the amount of their respective loans, and the terms of repayment are all set forth in the answers to Interrogatory 52. The pertinent paragraph of the pledge agreement reads as follows:

> That before Borrower shall sell or cause to be exchanged or transferred any part or portion of said shares of stock hereinabove referred to, he shall notify Bank in writing by registered mail at the Bank's address in Spokane, Washington, of his intention to sell such stock or cause it to be exchanged or transferred, and in said notice the Borrower shall further state the amount he has been offered for the stock, and the price, terms and conditions of the proposed sale. In the event the said notice specifies a trade or exchange of said stock for property other than cash, the value of the property to be exchanged or traded for the said stock shall be set forth.
>
> For a period of 30 days from and after the mailing of said notice, the Bank shall have the exclusive right and option to name a person to purchase the part or portion of said stock proposed to be sold, exchanged or transferred by the Borrower for the price and upon the terms and conditions stated in the notice.

Interrogatory No. 53

(A) State with respect to (1) Marine, (2) NBC, and (3) WTB, whether any of their directors, officers, employees, or other agents is serving or has served at any time since January 1, 1955 on the board of directors of any other bank located in Washington.

(B) If the answer to (A) is affirmative, state with respect to each such individual:

(1) His name and the nature of his affiliation with a defendant at the time of such service;
(2) The bank involved and its location;
(3) His length of service as a director of each bank.

Answer to Interrogatory 53

For Marine and NBC:

Two former directors of Marine and NBC and one present director of NBC have served as directors of other banks in Washington as follows:

Keith Fisken served as a director of Washington Mutual Savings Bank and also as a director of Marine and NBC from 1955 to 1966.

Arthur W. Faragher served as a director of Prudential Mutual Savings Bank and also as a director of Marine and NBC from January 1960 to January 1971.

Winston D. Brown, a director of NBC since August 25, 1966, served as a director of Prudential Mutual Savings Bank prior to becoming a director of NB of C.

For WTB:

During the period January 1, 1955 to date and continuing, an officer of WTB has served on a Board of Directors of two (2) other banks located in Washington. W. D. McLaughlin, Vice President, WTB, has served on the Board of Directors of Farmers State Bank, Uniontown, Washington, from March, 1966 to date. He has served on the Board of Directors of the Bank of Pullman, Pullman, Washington, since March, 1969 and continues.

PLAINTIFF'S ANSWERS TO INTERVENOR'S INTERROGATORIES (SET NO. 1)

* * * *

Interrogatory 14

With respect to paragraph 21(e) of the Complaint state whether plaintiff contends that this paragraph, in and of itself, alleges a violation of § 7 of the Clayton Act; and in further regard to said paragraph identify by city or county name, zip code numbers, or other reasonable delineation each of the "banking markets in other parts of eastern Washington" and state whether you contend for each such "market" that it is a "section of the country" within the meaning of § 7 of the Clayton Act, for purposes of this case.

Answer to Interrogatory 14

No. See answer to Interrogatory 15, below.

Interrogatory 15

With respect to paragraph 21(f) of the Complaint state whether plaintiff contends that this paragraph, in and of itself, alleges a violation of § 7 of the Clayton Act; and in further regard to said paragraph state whether you contend that each or any of the "local markets" referred to constitute a "section of the country" within the meaning of § 7 of the Clayton Act for purposes of this case.

Answer to Interrogatory 15

No. Plaintiff contends that paragraphs 21(e) and (f) taken together allege effects in violation of § 7 of the Clayton Act. With respect to paragraph 21(e), plaintiff at this time lacks the information necessary to make the requested geographic delineations. With respect to paragraphs 21(e) and (f), the "banking markets" and "local markets" referred to are "sections of the country" within the meaning of § 7 of the Clayton Act.

Interrogatory 16

With respect to paragraph 21(g) of the Complaint state whether plaintiff contends that this paragraph, in and of itself, alleges a violation of § 7 of the Clayton Act.

Answer to Interrogatory 16

No. See answer to Interrogatory 17, below.

Interrogatory 17

With respect to paragraph 21(h) of the Complaint state whether plaintiff contends that this paragraph, in and of itself, alleges a violation of § 7 of the Clayton Act; * * *

Answer to Interrogatory 17

No. Plaintiff contends that paragraphs 21(g) and (h) taken together allege effects in violation of § 7 of the Clayton Act. * * *

* * * *

DEPOSITION OF ROBERT F. BUCK TAKEN AUGUST 16, 1972

* * * *

DIRECT EXAMINATION

BY MR. TORRE:

Q. State your name, please?

A. Robert F. Buck.

Q Your address?

A. 1611 Roanoke Way, Mercer Island, Washington.

Q. Are you employed by the National Bank of Commerce?

A. Yes.

Q. What is your position?

A. Senior vice-president.

Q. And what are your duties in that capacity?

A. Well, they are multi, but in general I am in charge of business development for the bank.

Q. And what does that encompass?

A. Well, if I can recall correctly, I have reporting to me people who operate the BankAmericard, the so-called Business Development Department, which includes Advertising, Marketing, Public Affairs, Governmental Relations, the National Division, the Metropolitan Division, and in addtion I also have another small truncated operaton called Urban Affairs reporting to me.

Q. Do you serve on any management committees of the bank?

A. Yes.

Q. Which ones do you serve on?

A. Well, there is only one so-called management committee on which I serve. There are a number of special committees on which I serve. Are you interested in them?

Q. Yes.

A. I am Chairman of the BankAmericard Committee, I am Chairman of the Business Development Committee, I am Chairman of the Urban Affairs Committee, the Branch Expansion Committee, I serve ex-officio on the Budget Committee. There may be some others.

Q. Are you Chairman of the Branch Expansion Committee?

A. Yes.

Q. And what are your duties as the Chairman of the Branch Expansion Committee?

A. Preside over its meetings primarily. But technically I would assume that I would be responsible for analyzing and approving the applications of the branches that we submit to the Comptroller.

Q. What means are available to the National Bank of Commerce to establish branches?

A. Are you talking about de novo branches?

Q. Yes. Are there other types?

A. Yes, I think there are.

Q. And what are the other types of branches that can be established?

A. I am not sure I know all of them, but I know we can acquire branches by purchase, we can establish branches de novo in certain circumstances within the limitations of the rather stringent Washington law.

Q. Do you know what that law is?

A. I am not going to be prepared to say I know exactly. My general recollection is that we can establish de novo branches inside the City of Seattle, which is the head office of the bank. We can establish de novo branches in King County in which the City of Seattle is located, in unincorporated areas where we can establish facts justifying the bank on economic grounds.

I believe in the rest of the state we are restricted to de novo branching only in areas that are incorporated in which there is no bank.

Q. You can acquire banks in order to establish branches, is that correct?

A. We can buy banks and make them into branches of our bank as I understand it.

Q. Can you promote the organization of banks and their chartering and then acquire them as branches?

A. I don't know.

Q. Why don't you know?

A. Because, frankly, I haven't tried to promote a bank for the purpose of branching it except in the sense that I

believe that we would assist independent banks to be established wherever we felt there was an expectation that a bank could be established, and we would probably desire to acquire almost any bank that was established in the State of Washington under circumstances that would permit us to acquire it because the branching laws are so restrictive that outside of King County, we have no way to branch except by acquisition.

Q. If you so assisted the establishment of a bank in an area where you thought the prospects for a bank were good, would you seek to insure that you would acquire that bank at some future time?

A. I am sure we would use any legal and fair means of trying to establish a basis on which we could acquire it, sure.

Q. What means could you use to so insure the acquisition of a bank that you were promoting?

A. Well, I think that we would certainly offer to assist them in their organization, give them advice on how to go about setting up a bank.

We quite possibly would be interested in assisting them to find management for the bank. We would hope that we would get the correspondent relationship with such a bank. In some instances I suppose we might be interested in making a loan to some of the people who would be stockholders for the purpose of acquiring their stock.

Q. Would this be used to get leverage or some sort of relationship with them in order to acquire their stock at some future time?

A. It depends on what you mean by leverage. I assume that we would be doing it because we felt that there would be some advantage. But what is leverage? Leverage is taking somebody to lunch too.

Q. Has the National Bank of Commerce inspired individuals to organize a bank and assisted the individuals in organizing a bank and chartering a bank?

A. Yes.

Q. What bank was this or what banks?

A. I only know of one, and I am not sure whether we inspired it, but we certainly assisted the Columbia Center National Bank in Kennewick.

Q. Was it the intention of management of the National Bank of Commerce at the time it sponsored or assisted or promoted or inspired such a bank to be organized and chartered to eventually acquire that bank?

A. Well, within my qualification to answer for the management of the bank, which is strictly limited, I really don't know what the president of the bank or chief executive officer had in mind. I am a very competitive individual and I certainly hoped that we would be able to acquire the bank.

Q. Do you know of other banks in the State of Washington that have established branches by promoting or sponsoring the creation of banks and subsequently acquiring them?

A. I have had no direct knowledge of that.

Q. When you say you have no direct knowledge, what do you mean by that?

A. Well, I have heard rumors that this has been done, but I did not participate and I have never talked to anybody who admitted that he had done it, so I frankly have nothing but general gossip as to the subject.

Q. Do these sources of information lead you to believe that other banks have done it?

A. I am not—I don't know that they have. I know that there is speculation that they may have, but I don't know what the facts were, so it's very difficult for me to say.

Q. Was the assistance of the National Bank of Commerce that was given to the Columbia Center National Bank promoters done with the knowledge and consent of the Comptroller of the Currency?

A. Well, I don't really know what he knew. He knew certain things that we were doing to assist the establishment of the bank.

Q. Did you have meetings with officials of the office of the Comptroller of the Currency regarding this matter?

MR. MOEN: Pardon me, Counsel, are you referring to the Regional Administrator in Portland or the Comptroller of the Currency?

THE WITNESS: The representatives you say?

Q. (By Mr. Torre) Representatives for the Comptroller himself or his subordinates.

A. I never talked to the Comptroller. I believe I talked to some people from the Comptroller's office in Portland on the telephone. I am not really sure whether I ever visited with them in person. I have been in the Comptroller's office in Portland on a couple of occasions, but I really believe they were on behalf of branches of our bank and not in connection with this.

Q. What role did you play in the organization of the Columbia Center National Bank?

A. Well, let's see, why don't you give me some particulars? This was a process that took a number of years, and I am not—and I was involved in consultations about the subject on many occasions. But what is it that you particularly want?

Q. Generally speaking, what did you do with regard to—

A. I assisted in their search for a manager for one thing, I assisted in the effort to provide the economic justification for the branch, I think I discussed with Mr. Loney people who would be useful in the community in terms of their becoming directors and providing business to the bank.

I believe I went over the articles and by-laws, the forms and procedures that they submitted to the Comptroller. I guess you would say I was involved in a good deal of it.

Q. Did you assemble and help draft the application for the charter?

A. I did not, but I am not sure but what some of our people helped on it.

Q. Did you review that charter application before it went to the Comptroller of the Currency?

A. I think I did the second one, but I am not sure about the first one.

Q. For the record would you identify who Mr. Loney is?

A. Chairman of the Board of the Columbia Center National Bank.

Q. Was he the primary organizer of that bank or promoter?

A. I believe so.

Q. Would it be fair to characterize your position vis-a-vis the National Bank of Commerce from the Columbia Center National Bank as liaison in this organizational process?

A. I think so.

Q. Did you have veto power over any of the actions taken in the organization of that bank by the organizers?

A. Certainly not.

Q. Would they come to you for advice on a regular basis in their process of organization and chartering?

A. I don't think that there was any regular basis, but when Mr. Loney had questions, he occasionally called and wrote about it. I think he probably visited the bank and talked to me on a couple of occasions.

Q. Would you explain the process and the procedure that was involved in organizing the Columbia Center National Bank and what the National Bank of Commerce did precisely to assist in its organization, specifically, property, building, facilities, equipment, management?

A. Well, you are gong to have to refresh my memory on some of these as we go along.

Q. What did they do with regard to the land upon which the bank was to be built?

A. Well, we have to go back to how this all came about, I guess. Although I didn't personally discuss it, my understanding is that we were approached by Allied Stores or Realbon, which I believe is a real estate development affiliate of Allied Stores, which was the developer of the Columbia Center Shopping Center to establish a branch in that bank—pardon me, that shopping center,

and my recollection further is that we probably explored whether it could be a branch and came to the conclusion that it could not be a branch unless they went ahead and organized the community as a city, and after this was done, and I don't really know when I came into the picture, but I believe this had all been explored coincidentally with the time that the establishment of an independent bank was contemplated.

Q. You mentioned that the National Bank of Commerce could branch if the area was organized into a city; was any thought given to promoting that idea?

A. I have no personal knowledge that it was, but on—I believe that it was from conversations that I have heard. I did not participate in it as far as I know.

Q. Who would have knowledge with regard to this?

A. I suspect the people in Allied Stores explored this because we undoubtedly told them that we couldn't branch unless this was an incorporated area.

Q. After Allied Stores came to you, that is the National Bank of Commerce, what did the bank do once it determined it could not branch de novo into the area in which the Allied Stores wanted a branch of your bank located?

A. I don't know who approached Mr. Loney or whether he approved us or whether others in the Tri-Cities community approached us because these plans were general knowledge in the community. It's a new area and a number of banks have been formed de novo in that area. So I honestly can't tell you whether Mr. Loney approached us after discussions with others over there or whether we conceived the idea of trying to get a bank established in the area. But in any event, I did discuss it on a number of occasions with Mr. Loney.

Q. You mentioned that a number of banks had been organized in the area, what banks were these?

A. Well, I think specifically the Bank of Richland, the Bank of Kennewick were both formed in the post-War years, and this is almost by definition true because there was almost literally nothing there until the War.

Q. Were any banks formed since 1960?

A. I don't know.

Q. The banks you mentioned, are they still existing as independent banks or have they been acquired by other banks?

A. I believe they have been acquired.

Q. Who have they been acquired by?

A. The Bank of Richland I believe by the Old National Bank in Spokane, I don't know who acquired the other one, the Bank of Kennewick.

Q. Do you have any reason to believe that the Bank of Richland was sponsored by the Old National Bank of Spokane?

A. No personal knowledge, but again it's a matter of gossip.

Q. A matter of gossip that it was sponsored?

A. Yes.

Q. If we will continue with the assistance that was given by the NB of C in establishing the bank, what did they do as far as acquiring the land on which to build the bank?

A. They never did acquire it. You have to remember that Allied Stores was not interested in a little ordinary independent bank with no financial security and no expertise in that kind of a shopping center. It was their intention to make this the premier shopping center of Southeastern Washington, and they obviously approached us because they thought from the experience that they had in establishing shopping centers in King County that a bank of our size would be interested in being in this kind of a shopping center, and obviously, we would have been. But they were not at all interested in having just an ordinary community bank I think in that shopping center because they wanted financial assurance that whoever signed that lease was going to be responsible, and they wanted to have a kind of a building built that would be a credit to the shopping center and would be the kind of a building that everybody else was going to have to build if they were going to be a tenant. This was one of the problems in establishing an independent bank, which by definition might have problems in meeting the financial commitments of that kind of a buildnig.

So it is my understanding that—well, I don't know who is the lessee, whether it is an affiliate of the National Bank of Commerce and then there is a sub-lease to the Columbia Center National Bank, but I believe it is, so that in some way we are on the hook.

Q. There is a ground lease, is that correct?

A. Yes, there is a ground lease, but I say I am not sure exactly to whom it is, whether it is the King County Building Corporation, which is a subsidiary of Marine Bancorporation as the National Bank of Commerce is or how that was done. But I am quite sure they wanted some assurance that we were going to provide some muscle to this entity, and we did.

Q. Who would know the details of the arrangements involved in the lease, who were the parties on the lease and so forth?

A. Well, that would be in our files.

Q. Was there any provision, to your knowledge, written in the lease with regard to exclusivity, that is, that the Columbia Center National Bank or the National Bank of Commerce would be the only bank permitted in Columbia Center?

A. I don't know. I don't remember reviewing the lease, but my belief would be that there was not because I think they were aware of the fact they can't do that.

Q. Who financed and built the building for the Columbia Center National Bank?

A. If it was the King County Building Corporation that was the ground lessee, then I believe they did and then entered into a lease agreement with the Columbia Center National Bank.

Q. Who is the King County Building Company, who are they?

A. This is—I believe the name has been changed recently, but at that time it was a wholly owned subsidiary of the Marine Bancorporation.

Q. What is its new name?

A. I don't know, it's Commerce something, but—that can be supplied.

Q. Is it still a subsidiary of the Marine Bancorporation?

A. Yes.

Q. Was it necessary for you acting as liaison for the National Bank of Commerce to give assurances to the Comptroller of the Currency that you stood behind and intended perhaps at a future time to acquire the Columbia Center National Bank?

A. You have got two questions there.

Q. Well, let's take the first one—

MR. HARTMAN: You have got three questions, the necessity of it all.

THE WITNESS: What is the question now?

MR. TORRE: I will break it down.

Q. (By Mr. Torre) In your role as liaison for the National Bank of Commerce to the Columbia Center National Bank, was it also necessary for you to make known the intention of the bank, the National Bank of Commerce, to stand behind Columbia Center National Bank?

A. We gave the Comptroller indirectly through his regional office assurances that we would supply management and that we would supply all assistance that might be required to make this a viable, independent bank.

Q. Did you indicate to him that you had hopes of eventually acquiring this bank as a branch?

A. I wouldn't be surprised. I don't think that is a secret. We have ambitions to acquire anything we can acquire.

Q. Do you have a ball park figure on what the overall cost to the National Bank of Commerce was in this whole process of organizing, chartering and helping to operate the Columbia Center National Bank?

A. I have a recollection that the building cost something in excess of a quarter million dollars, but indirect expenses, I have no knowledge of.

Q. Could you estimate?

A. No, I have no way of knowing. How do you charge my time and people's time?

Q. How would you compare the cost of organizing that kind of a bank as opposed to establishing a branch office de novo in a similar location where you could establish a branch de novo? Let's assume you could establish a

branch de novo, how would you compare that cost with the cost of sponsoring a bank?

A. Substantially less.

Q. Substantially less?

A. Yes. The cost of establishing a de novo branch would be substantially less because, obviously, you don't have to go through all the legal steps of incorporating, selling stock and a lot of things that were done. We didn't do them, but somebody did.

Q. Did you assume the cost of issuing stock for Columbia Center National Bank?

A. No.

Q. Did you give loans to people to buy the stock in the Columbia Center National Bank?

A. I never did. I honestly don't know.

Q. By you I mean the National Bank of Commerce.

A. I don't know. I was not involved in consideration of any loan for that purpose to the best of my recollection.

Q. Do you know who was, if anyone was?

A. I don't know that anyone was, so I don't have any recollection that anybody was.

Q. Did the bank—

A. Wait a minute, I believe we may have assisted Mr. Horning to acquire some stock, who is the president of the bank.

Q. And how did you assist Mr. Horning in acquiring some stock?

A. I am not sure that we did. I said I believe we may have made him a loan to acquire some stock.

Q. Do you know if the bank indirectly assisted individuals to get loans to purchase the stock from other financial institutions?

A. No, I don't know that they did. These stockholders were men of mostly independent means and they may have arranged for credit in various places, and in fact, some of them may have borrowed the money from some of our branches, but I was not involved in it and I don't know.

Q. The National Bank of Commerce assumed the costs of leasing the land and building the building for the Columbia Center National Bank, is that correct?

A. The King County Building Corporation, I believe, not the bank.

Q. The King County Building Corporation was a subsidiary of the Bancorporation?

A. Yes.

Q. The National Bank of Commerce would have to do the same thing if it were going to establish a branch, is that correct, they would have leased the land or buy the land, they would have to build the building?

A. Correct.

Q. Would the building be similar to the one built for the Columbia Center National Bank as the one built as a branch de novo for the National Bank of Commerce?

A. If it were in that shopping center, it woud have to meet the specifications of the shopping center developer, and it would be that kind of a building or they wouldn't be there.

Q. Who assumed the cost of the salaries for the management of the Columbia Center National Bank, was it paid by the Columbia Center National Bank or was it paid indirectly by the National Bank of Commerce?

A. Well, Mr. Horning, who is the president of that bank, was a manager of one of our branches up until the time that he was elected or selected by the organizer to be a director or to be the president of the bank. I am almost positive that we never paid his salary after the bank was organized because I don't see how we could. I guess that's the answer to your question, isn't it?

Q. So you would have, of course, to pay the salary of staffing a branch if you had established a de novo branch?

A. Yes.

Q. Would you agree that there is less risk involved in establishing a de novo—strike that.

Would you say that there is less risk involved in sponsoring a bank and hoping to eventually acquire it as a branch than in entering de novo on the same site?

A. Yes.

Q. Is there any reason, Mr. Buck, why the National Bank of Commerce couldn't seek to establish branches in areas where it is not permitted to branch de novo by sponsoring organizational banks in those areas and eventually acquiring those banks as branches?

A. Economic reasons.

Q. What are those economic reasons?

A. Well, there aren't very many places in the state where there are not already sufficient branches, to be honest with you. You have to find a very promising growth situation in order to justify the expense, and this Columbia Center was one of those very promising new areas where a whole new community was being established. So it was an exceptional situation.

MR. HARTMAN: Do you put any time connotation on the word eventually? Does that mean any time in the future or does it mean within five years?

MR. TORRE: I will just stand on eventually. I don't think it is necessary to qualify it. He answered it.

A. Well, may I say that we have been using this word "sponsor," I think we should better have a definition of what you mean by "sponsor," because as far as I am concerned in a state where de novo branches is almost prohibited, there is certainly nothing illegal in encouraging the establishment of independent banks which you might hope to acquire, and that is what I call sponsoring. So if we are using the word in the same sense—

Q. Yes, we are.

A. Okay.

Q. We are not contending that it is illegal.

A. No, I understand you are not.

Q. So you would say then if there was an opportunity in a community presented by prospects of future growth, that the bank would consider sponsoring a de novo bank?

A. In the terms of assisting in the establishment of that bank within the legal metes and bounds of what we can do, why, yes, we would.

Q. Were you ever told by any bank regulatory agency that this procedure was illegal or improper?

A. Was I? No.

Q. Was the bank, to your knowledge, ever told that?
A. Not to my knowledge.
Q. Was this question ever raised by the Comptroller of the Currency to you?
A. No.
Q. In your meetings?
A. No.
Q. Mr. Buck, I am going to give you a letter written December 29, 1967, apparently by yourself to Mr. Dean W. Loney—
MR. MOEN: What is the date on that?
Q. (By Mr. Torre) December 29, 1967. If you would look at that and read it over.

(Brief pause.)

A. Okay.
Q. Have you read the document?
A. Yes, sir.
MR. HARTMAN: I haven't read it yet.

(Brief pause.)

Q. (By Mr. Torre) Did you write this letter, Mr. Buck?
A. Yes, sir.
Q. Did you write it in your capacity as vice-president for the National Bank of Commerce?
A. Yes.
Q. Did you write it in your capacity as liaison between the National Bank of Commerce and the Columbia Center National Bank?
A. Yes.
Q. Is that photocopy a true and accurate copy of the original letter written by you?
A. It appears to be.
Q. Why was it necessary for you to write that letter?
A. Well, my recollection is that the Comptroller had denied the original application because—well, I guess I shan't say because I don't know. They don't give reasons for denial generally, they just didn't approve it, and in trying to assist the organizers, in conversation with the Comptroller, we ascertained that one of

the problems was weakness in proposed management, and so I wrote this letter as a commitment to the Comptroller to supply certain strengths to this new bank which apparently it didn't have inside its own resources at the time.

Q. Prior to the denial by the Comptroller of the first application submitted, was the National Bank of Commerce involved in assisting in the organization of the Bank?

A. Well, the time sequence is so long that I don't know to what degree we were. I would have to say we were involved, but certainly not as we were later on under this one.

MR. HARTMAN: Have you made this a deposition exhibit yet?

MR. TORRE: I will in due course.

MR. HARTMAN: I thought I missed something.

MR. TORRE: We will have it attached to the deposition and identified as Buck Exhibit No. 1.

(Buck Deposition Exhibit No. 1 marked for identification by the reporter.)

Q. (By Mr. Torre) I will give you a document now, a letter dated January 3, 1968, to Mr. Kenneth W. Leaf, Regional Administrator of the National Banks, Portland, Oregon, from Mr. Dean Loney, and we will have this marked as Buck Exhibit No. 2, and I will ask you to read that and focus your attention on the third paragraph of that letter.

(Buck Deposition Exhibit No. 2 marked for identification by the reporter.)

(Brief pause.)

A. Okay. That is the one that begins, "We further wish—"

Q. The paragraph, "We further wish to call your attention—"

A. Yes.

Q. Does the letter referred to in the third paragraph of Buck Exhibit No. 2 refer to the letter identified in

the record as Buck Exhibit No. 1 that you just examined and identified?

A. I can't absolutely state that it does because there is no copy of it attached, but I assume it does.

Q. Directing your attention to the upper right-hand corner of the letter, Mr. Buck, would you please identify, if you can, the initials?

A. Andrew Price and Robert F. Buck.

MR. HARTMAN: You are referring to the third paragraph of the January 3 letter?

MR. TORRE: That's right, "We further wish to call to your attention the attached copy of the letter—"

MR. HARTMAN: Okay.

THE WITNESS: Maybe that's the fourth paragraph.

MR. TORRE: I am sorry.

Q. (By Mr. Torre) Do you have any reason to believe that the letter referred to is not the letter you examined?

A. No, the letter was for the purpose—

Q. Of advising the Comptroller—

A. —of advising the Comptroller we would assist these people.

Q. Mr. Buck, I show you now a letter dated July 12, 1968, which we will identify for the record as Buck Exhibit No. 3. It is a letter addressed to you by Mr. Dean Loney; would you please examine that?

(Buck Deposition Exhibit No. 3 marked for identification by the reporter.)

Q. (By Mr. Torre) Do you recognize that letter, Mr. Buck?

A. Yes, sir.

Q. Was it received by you from Mr. Loney?

A. Yes.

Q. Could you identify the marginal notations as being yours?

A. Well, they appear to be.

Q. I realize that copy is not the best, but if you could try—

A. It looks like my handwriting. I don't have any present recollection of writing it, but it looks like my handwriting.

Q. Can you read it?

A. Yes, I can read some of it.

Q. Well, the first paragraph of the letter, "This letter is written following the meeting with Frank Abersfeller and Jim Dunham in Seattle on Thursday, July 11." Would you please identify those two individuals?

A. Mr. Abersfeller is in charge of Correspondent Banking relationships for the bank, and Mr. Dunham, he's in our Bank Property Administration Division.

Q. What were their duties with regard to the Columbia Center National Bank that necessitated their meeting with Mr. Loney?

A. Well, Mr. Abersfeller in the Correspondent Banking Division would perform his liaison function with organizers of banks with whom we expected to become a correspondent, and Mr. Dunham in this case I believe was involved because of the construction of the building at Columbia Center.

Q. Directing your attention to the Paragraph No. 3 at the bottom of the first page, it says, "We need a clear definition and understanding of the management responsibilities as between the directors of the unit bank and the management of the National Bank of Commerce. For instance, many of the steps taken initially will have a bearing on the long range operation of the bank many years after it has changed from a unit bank to a branch bank. It would seem to make better economic sense that all plans point to the long range operation rather than the short term unit operation."

Did Mr. Loney have reason to believe that the bank was going to be acquired definitely by the National Bank of Commerce?

A. Not in my opinion.

Q. Why do you think they referred to the bank long after it became a branch, "on the long range operation of the bank many years after it has changed from a unit bank to a branch bank"?

A. Because I think that it is very logical that the owners—I mean that the incorporators had in mind that it would become a branch bank. They didn't really want over the course of the next indefinite lifetime to be involved in the management of the bank.

Q. Was he seeking to have the operations of the Columbia Center National Bank made compatible with the branch operations of the National Bank of Commerce?

A. Well, you will have to ask him, I don't know. I think that since Mr. Horning came from our branch system and that we agreed to assist these people in management, that it would have been logical to try and make it compatible with the thing that we knew how to do.

Q. Can you read for us your notations below Paragraph No. 3 at the bottom of the page?

A. I am trying, I believe it says, "We will give all requested"—which I assume is "requested", "aid, and in our opinion any further helpful assistance; management will be by officers and directors plus assistance by NB of C."

That's what I seem to have noted, and I assume those are my notes for a reply to his letter.

Q. The second point, will you read that, please?

A. "We agree to long range planning desirable."

Q. What do you mean by that? When you wrote that, what did you mean?

A. I don't really know, but I assume, and you have to remember that we admitted that we would like to acquire this bank, and within that framework, a long range plan that fitted into our system would be examined, and I would say that today.

Q. Would you say there is a general understanding between the bank and its organizers that the bank would be acquired at some future time?

A. No, I did not.

Q. There was no understanding at all, you say, that the bank would be acquired?

A. Well, what's an understanding, is that an agreement?

Q. Well, do you understand by agreement that—

A. There was no agreement that the bank would be acquired.

Q. You are saying there was no formal agreement, written agreement?

A. There was no informal agreement either.

Q. Was the expectation of the National Bank of Commerce that they would acquire this bank at some time?

A. Well, what is an expectation?

Q. They hoped.

A. It was our hope that it could be acquired.

Q. Was it the expectation or hope of the organizers that it would be acquired by the National Bank of Commerce?

A. Oh, again you are going to have to speak to them.

Q. To your knowledge from reading Mr. Loney's letter.

A. I can only say I think they thought it would be acquired by somebody at some time, but we hoped that it would be acquired by the National Bank of Commerce and that the assistance that we were giving to them in getting it established would add some inducement to them in addition to whatever the price might be sometime and make a sale to us.

Q. Do you understand Mr. Loney's language in Paragraph No. 3 as being in expectation of an eventual acquisition by NB of C?

A. Well, it certainly consisted of that, yes.

Q. Mr. Buck, I hand you now a letter—another copy of a letter, that same letter that you have looked at, Buck Exhibit No. 3, can you identify the handwriting in the margins of that letter?

A. No, I cannot.

MR. HARTMAN: Is that the same letter?

MR. TORRE: The same letter, different marginal notations.

MR. HARTMAN: Why don't you introduce it?

MR. TORRE: I don't want to introduce it unless he can identify it. I only asked if he can identify it.

THE WITNESS: No, I have no idea.

Q. (By Mr. Torre) Again referring to this letter of July 12, did you respond to that, do you recall, by letter or by phone?

A. I don't recall. If I responded by letter, there would be a letter in the file, I would assume.

Q. Mr. Buck, I will show you now a document headed, "Credit Memoranda, Columbia Center National Bank, Kennewick, Washington," and it is a series of memo notations by various individuals. At the bottom of the first page and the top of the second page is a notation, "12-21-67," apparently that is December 21, 1967, with the initials, "R.F.B." in capitalizations.

We will have this noted as Buck Exhibit No. 4. Would you please look at that? That is in that group of documents.

(Buck Deposition Exhibit No. 4 marked for identification by the reporter.)

Q. Directing your attention to the top of the second page—do you recognize this document or that part of this document with the initials "R.F.B." as being authored by yourself?

A. Yes, sir.

Q. And is the "R.F.B." Robert F. Buck?

A. Yes, right.

Q. Did you write this in the ordinary course of your business activities as vice-president of the National Bank of Commerce?

A. I am sure I did.

Q. At the top of the second page it discusses a meeting that you and Mr. Fields had and Mr. Loney and Mr. Leaf who were in attendance, and it says Mr. Leaf made it clear to you that it would be desirable to have Messrs. Sotwell, Funk, Broughton, Hemphill and Carrington appear as part of the organizing group and not merely as prospective stockholders.

He also indicated that it would be helpful to have some explanation of the supporting role of NB of C. First, would you please identify the individuals named in that first paragraph? Who is Mr. Fields?

A. Mr. Fields was the economist that we—I don't know whether we—or who contracted with him, but we at least negotiated in and assisted in obtaining Mr. Fields to make an economic survey to justify the charter.

Q. Do you recall whether the National Bank of Commerce paid for Mr. Fields' fee?

A. I believe we did not. I think this was part of the incorporation cost.

Q. And Mr. Leaf is the Regional Comptroller of the Currency, is that right?

A. He was at that time. Mr. Stowell, who you have interviewed, is now a consultant to Marine. He was then either executive vice-president of the bank or had just retired, I can't remember which.

Mr. Funk was at one time a senior credit officer in the bank, a resident of Eastern Washington, acquainted with this area and was about to retire or had already retired from the bank.

Mr. Broughton is a member of the Board of Directors of the National Bank of Commerce who lives in the vicinity of the Tri-Cities area.

Mr. Hemphill is another member of the Board of the National Bank of Commerce who has extensive interests in Eastern Washington, Idaho, and various other places.

Mr. Carrington is another member of the Board of the Bank who had some specific interest I believe in the Tri-Cities area, but I can't remember what it was. I believe it was some land investments.

Q. The third paragraph on that page refers to a phone call that you received from Mr. Leaf wherein he advised you that he was taking the liberty to advise you that the Bank of Prosser had filed an application for a branch at Columbia Center, and he urged you to expedite your re-application as much as possible because of it, and he did this, he said, because of the good relationship—or you said he did this because of the good relationship between his office and the National Bank of Commerce. What is the Bank of Prosser?

A. I don't know what it is today. I believe it is a branch of somebody else's bank, but it was then an independent bank.

(Discussion off the record.)

Q. What was the Bank of Prosser at that time, Mr. Buck?

A. It was an independent bank in Prosser.

Q. How far is Prosser from Columbia Center?

A. Somewhere between 20 and 30 miles. I don't know exactly.

Q. Was it normal for Mr. Leaf to advise the National Bank of Commerce of such activities by state banks?

MR. HARTMAN: What do you mean by normal?

MR. TORRE: In the normal course of business.

MR. HARTMAN: He doesn't know what the normal course of business is.

Q. (By Mr. Torre) In the normal course of your business did you receive phone calls from Mr. Leaf advising you of the branching activities of state banks?

A. Occassionally. We would get formal advice from Mr. Leaf's office on the filing of every application for a bank.

Q. What do you mean when you said that Mr. Leaf was taking the liberty to advise you of the Bank of Prosser's application?

A. I have no idea because we would have received a letter from Mr. Leaf's office advising us of the filing of this application, and I have no idea what motivated him to call us before the letter went out. But I didn't think it was very secretive one way or the other.

Q. Why did Mr. Leaf call you instead of the Columbia Center Bank?

MR. HARTMAN: He can't answer for what Mr. Leaf did at one time or another.

Q. (By Mr. Torre) If you can, answer.

A. I don't know.

Q. Why do you think Mr. Leaf called you?

MR. MOEN: He answered the question, I think, Counsel. He said he doesn't know.

MR. TORRE: He can give his opinion.

MR. MOEN: If he can answer the question, I have no objection to him answering.

Q. (By Mr. Torre) Was it because you were a principal involved in the organization of the bank and that he felt you were the key person to communicate this to?

A. I think at this time I had already written that letter to Mr. Loney saying what we would do for the bank, and Mr. Leaf knew about it, so that is possibly why. I don't know what his motivation was.

Q. Did you have any problems in finding individuals who were willing to invest in the stock of the Columbia Center National Bank?

A. I had nothing to do with that.

Q. To your knowledge, in your discussions with the other executives of the bank was there any problem in finding such individuals?

A. In talking to Mr. Loney, my recollection is that he told me that they were not having any difficulties in finding people to subscribe.

Q. Would you think that there would be any difficulty in Spokane finding the kinds of individuals to subscribe to the stock of a bank being sponsored by the National Bank of Commerce?

A. Yes, indeed.

Q. Why?

A. Well, because it is completely a different economic situation, and one little bit of a unit bank in Spokane is not a significant entry for the National Bank of Commerce into Spokane. So they really wouldn't have any inducement, neither would we.

Q. You are saying that the National Bank of Commerce couldn't make a go of it in Spokane with a small bank?

A. I frankly think it would be in my personal judgment a difficult decision to know what kind of resources should be committed in a community the size of Spokane if you could only have one branch there, and this is my personal opinion.

Q. What if you could branch the unit bank before you acquired it, would that change the situation?

MR. HARTMAN: What was that question again?

A. By definition we have acquired it when we branch it, so what do you mean?

Q. Before the unit bank was acquired—would be acquired by you, it could, could it not, if it were headquartered in Spokane, branch in the City of Spokane, in the unincorporated areas of Spokane County, is that correct?

A. Legally.

Q. So if it did enter into Spokane by this means, it could branch in Spokane by—

MR. MOEN: What bank?

Q. (By Mr. Torre) The National Bank of Commerce.

A. You say if it entered by any means, I don't understand that it has entered.

Q. Assuming the National Bank of Commerce sponsered a unit bank in Spokane.

A. Assuming that the National Bank of Commerce assisted in the establishment of a unit bank in Spokane?

Q. With the intention of acquiring that bank at a future time.

A. With the hope of acquiring that bank at an appropriate time, it probably with the consent of the Comptroller and a proper showing of economic need could branch within the City of Spokane.

Q. Would you think the prospects of such a bank would be enhanced by such branching?

A. Well, I certainly would think so or they wouldn't be able to prove the need for the bank.

Q. Do you believe that the National Bank of Commerce lacks the resources to effectively back the sponsored bank in Spokane?

A. No, I don't think they lack the resources, but—

Q. Does it lack the managerial capability to staff such a bank if it has to?

A. You asked me about the resources, I said I didn't think it did, but there still is an economic judgment to be made as to what is to be gained, and I don't know the answer to that.

Does it lack the management; we have problems providing management to our own branches, so it would be a problem to provide management to that kind of a bank. Whether we could do it or not, I suspect that we could, but it would be at the expense of some of our existing branches.

Q. When you refer to economic judgment, what do you mean?

A. Getting back to what I said a few minutes ago, I really think that—I am really unsure that I would recommend to our management that we go into Spokane with one bank, one office, because I am not convinced that that would be a meaningful entry into the market of that kind for a bank of our size and stature.

Q. You are saying the bank is strong but it needs a large entry even though it is strong?

A. The bank is strong. But what is the point, what is the impact upon our earnings and diluting those earnings by subsidizing a losing proposition?

Q. Do you think you could have an impact, though, on the Spokane market by such entry?

A. With one office?

Q. With one or possibly more offices.

A. One or possibly more, certainly, we have already demonstrated that.

Q. You are saying you could have an impact on the market?

A. I thought I was saying that if we could have more than one office in Spokane, and how many more would be a question of judgment, we could make an impact—we could have an impact in Spokane.

I am repeating, however, that it is questionable in my mind whether I would recommend that we go into Spokane with one office.

Q. Has any study been done by the bank with regard to the cost of such entry into Spokane?

A. Not to my knowledge.

Q. So you really don't know whether you could project the loss or not or gain on such a venture?

A. We have not made that kind of study because we have no plans to move into Spokane by this means.

MR. TORRE: Mr. Verveer has some questions. That's all I have.

MR. MOEN: I am going to interpose the same objection to the same interrogator as I did this morning,

that our objection simply be continued as to all questions asked by the second questioner.

MR. HARTMAN: Same objection.

Q. (By Mr. Verveer) Mr. Buck, has the National Bank of Commerce ever considered acquiring the Farmers & Merchants Bank now headquartered in Opportunity, Washington?

A. Yes.

Q. Have you ever participated in discussions with the controlling shareholders of that bank?

A. Yes.

Q. Discussions which relate to the possibility of acquisition or merger?

A. Yes.

Q. And who are the controlling shareholders of Farmers & Merchants Bank?

A. I don't know who they are now. At the time of my discussions, my recollection is that there were three gentlemen named Hall, Klaue and Layman.

Q. Approximately when did you have the discussions with these controlling shareholders?

A. I can't remember the dates. I haven't had any for some time, probably in the last year, but I recall several in the preceding years.

Q. What recommendations did you make to the top management of the National Bank of Commerce in connection with the Farmers & Merchants Bank?

A. What recommendations did I make?

Q. Yes.

A. My last one was that we told them to go fly a kite, we weren't interested at the price they wanted.

Q. So you did discuss price with them?

A. They indicated to us what they wanted, we never indicated to them what we would pay.

Q. Do you happen to recall how far apart you were?

A. About one hundred percent.

Q. Could you tell me in terms of dollars about how far apart you were?

A. My recollection at the moment is that they wanted about five million dollars and we thought it would be closer to two, but maybe we would go two and a half.

But these are just figures that I am plucking out of a cold memory.

Q. About when were the discussions or at least discussions in earnest with Washington Trust Bank over the possibility of merger begun?

A. I have no personal knowledge; I did not participate in them.

Q. How serious were the negotiations between the National Bank of Commerce and the Farmers & Merchants Bank?

A. I don't think we ever got to be serious on our part because it was so apparent—at first they said that they really weren't interested in selling because they wanted to manage the bank, they were happy with its growth, they thought they could build it up substantially, and then in the last discussions, I think I was given to understand that they had an opportunity to sell it to somebody else and that if we were interested, it was available at their price, and I made an analysis at that price as a function of a premium on deposits, as a function of price earnings and came to the conclusion that it was entirely without reason and told him that we simply were not interested.

Q. I will ask you, Mr. Buck, if you recognize the handwriting on that document?

A. Yes.

Q. Whose handwriting is that?

A. That's mine.

Q. Would you examine the three sheets of figures underneath the top sheet?

A. Yes, those are some computations I made on the various methods of valuing the stock.

MR. VERVEER: We offer this.

MR. MOEN: May I look at that?

(Brief pause.)

(Buck Deposition Exhibit No. 5 marked for identification by the reporter.)

Q. (By Mr. Verveer) Mr. Buck, would you describe this entire document now?

A. I beg your pardon?

Q. Would you explain what this document is, what it consists of?

A. Well, the first page are my notes on the locations of the three offices of a bank in Spokane that I think is called the American Commercial Bank or something like that, and the other four names are the names of the officers of the three offices of the Farmers & Merchants Bank of Rockford plus the name of a place where they had at one time applied for a branch.

The other three pages are some computations that I made of the value of the stock of the Farmers & Merchants Bank.

Q. Mr. Buck, why did you happen to put together on the first page the branch locations of Farmers & Merchants Bank and the American Commercial Bank?

A. Because Mr. Emory Hall in explaining why he did not want to sell the bank said that he thought maybe some day it might be possible for them to acquire the American Commercial Bank, and that if he did, this would be a much more attractive prospect for acquisition by the National Bank of Commerce than they were at the moment.

Q. You did not—or did you have any feeling that he was correct in that assessment or incorrect?

A. Well, now, what assessment?

Q. That a combined American Commercial Bank and Farmers & Merchants Bank would be attractive to the National Bank of Commerce?

A. It's obvious.

Q. Well, enlighten me.

A. Well, obviously these three offices in Spokane and they would have four outside, that was much more attractive than four offices out in the bushes around Spokane.

Q. Three offices inside would be regarded as attractive by the National Bank of Commerce?

A. I can't answer that, I said it would be attractive to me.

Q. Mr. Buck, in your opinion would the Farmers & Merchants Bank be an adequate entry vehicle into the Spokane market for the National Bank of Commerce?

A. I did not then consider that it was an entry vehicle into Spokane and I do not so consider it today.

Q. Why is that?

A. Because it isn't in the Spokane market. It is in the suburban market, and you might just as well talk about getting into Seattle by being in White Center or Burien or Northgate. It just isn't in the market, it's a suburban market and that's all.

Q. And so you are telling me that its location, that is the problem?

A. Its location is definitely the problem. It only had one branch in the vicinity of Spokane and that was at Opportunity. Rockford is not even a suburban area and Cheney is quite a long ways from Spokane.

Q. If I can restate your answer, you said that it is not an adequate entry vehicle, and the reason for that is essentially that its office is not in the commercial district of the City of Spokane?

A. Yes. It does not give us entry into the downtown commercial area of Spokane. Furthermore, of course, there is always the problem of whether you can move an office even if we could have moved it to Spokane. I don't know whether we could have gotten permission to do so, so I didn't consider it was Spokane at all.

Q. Would you explain very briefly the desirability of having an office in the commercial district of Spokane?

A. Yes. From my standpoint as the officer responsible for the National Division, we have certain national accounts that in the weighing of which bank to do business with give consideration to whether it has certain geographic coverage, and that would be one factor that would be important in my mind.

There are certain businesses indigenous to Spokane that want to do business with a bank in Spokane for reasons of their own, prestige, prejudice, whatever it may be, that would be another reason why you would want to be downtown.

The third reason would be that most of the business that is done in Spokane is done in downtown Spokane.

I don't know that I can think of any others, but those are three pretty good ones.

Q. All three of those reasons relate to the idea of servicing large customers, business-type customers rather than the idea of marshaling household accounts?

A. Yes, and I know what you are getting at. I said that I would be concerned whether we could do what we wanted to do with one office. The fact is that one office might be able to serve these three sectors, but the cost of maintaining that kind of an office is very substantial, and unless you can develop deposits in the surrounding area to help defray those costs in maintaining that prestigious downtown office, you have got an economic problem.

I can go farther. We are in the Crown Colony of Hong Kong, we have five offices in Hong Kong, most of our business could be done from one, we have five offices because we have developed indigenous balances in Hong Kong to offset the expense of maintaining the office, and I look at Spokane the same way.

Q. Mr. Buck, I have a document, a four-page document headed "Minutes, Branch Expansion Committee, May 22, 1968." I would like you to examine it.

We might be able to expedite matters by stating that the matter we are particularly concerned with in this document is that on the third page headed "Lynnwood, Security Bank of Lynnwood."

Mr. Buck, do you recognize this document?

A. I recognize what it purports to be, but I don't—

Q. What does it purport to be?

A. Well, it purports to be an excerpt from the minutes of our Branch Expansion Committee of the National Bank of Commerce.

MR. VERVEER: Mr. Moen, are you prepared to stipulate that you produced this document from the National Bank of Commerce files?

MR. MOEN: I will so stipulate.

Q. (By Mr. Verveer) According to these minutes, Mr. Buck, you were present at that meeting, is that correct?

A. Yes.

Q. May I ask you to read into the record the paragraph headed "Lynnwood, Security Bank of Lynnwood"?

A. "Mr. Buck was asked to contact Jim Howells of the

Security Bank of Lynnwood concerning the acquisition of that bank by NB of C. That bank could branch into the proposed Lynnwood Shopping Center being developed by the Bon Marche which is expected to be as large as Northgate and the Tacoma Mall. If the bank cannot be acquired, the committee's recommendation is to sponsor a unit bank to be completed in the shopping center."

Q. Taking the first two sentences first, what possibility do those two sentences suggest in terms of the acquisition of a bank with a branch additional to any offices it might have at the moment?

A. I am not sure what you mean. Are you suggesting that it means we could acquire a bank which could then branch into the shopping center?

Q. What about the suggestion that you could agree in principle to acquire a bank, as to the present ownership of that bank to apply for a branch, then acquire the bank plus the branch?

A. You are suggesting that, we didn't consider it. As a matter of fact, I believe Mr. Howells had already applied for another branch in the shopping center and that's what is being referred to.

Q. Why then were you asked to contact him?

A. Because we for a long time had thought that it would be a desirable acquisition.

Q. You say that would be a desirable acquisition, do you mean the Security Bank of Lynnwood?

A. Yes, with or without the branch in that center.

Q. In light of that could you explain the last sentence of the paragraph?

A. In light of what?

Q. In the light of your previous answer would you explain the last sentence of the paragraph?

A. The last sentence means, as I understand it, that if we could not acquire the Security Bank of Lynnwood, the committee's recommendation was that we try to sponsor a unit bank in the shopping center.

Q. Does your previous answer not seem inconsistent with that statement, the previous answer being that your primary concern was acquiring the Security Bank of Lynnwood but not—

A. No, I didn't say that. I said we have and probably would continue to have, if it were possible, an interest in acquiring the Security Bank of Lynnwood with or without the branch in that shopping center. What I meant was that we had been interested before the shopping center was proposed and we maintained that interest after it was proposed.

I am also quite certain that at the time that this discussion took place, Mr. Howells had already applied for a bank in that shopping center or a branch in that shopping center. I don't know whether my recollection is correct on the timing, but I know that he did so apply, and I believe he may have a charter for it, as a matter of fact.

So all I am saying is that we were interested in the Security Bank of Lynnwood, we would have been interested in acquiring his three branches regardless of whether he branched into the shopping center. We would also be interested in getting into that shopping center.

Q. And there is no possibility that upon contact with Mr. Howells, you might have suggested to him your interest and explained to him your interest might have been heightened by a branch in the shopping center?

A. Absolutely not. As a matter of fact, it didn't occur to us. In my conversation with Mr. Howells, we were both aware that he had already applied for a branch in that shopping center.

Q. Mr. Buck, are you aware of whether there are other documents in the bank's files that relate to this transaction aside from the particular reference?

A. Well, no, I am not. There was no transaction, so I don't know what documents those would be.

Q. You would not have prepared a memorandum of conversation with Mr. Howells within a folder perhaps marked "Security Bank of Lynnwood"?

A. It's possible that I could have. I am sure I reported the conversation, but whether it was verbal and I put a memo in the file, I don't know.

Q. Is that file still in existence? Could it be produced if necessary?

A. If there is such a file, it can be, and I am sure we will be happy to produce it.

(Buck Deposition Exhibit No. 6 marked for identification by the reporter.)

Q. I have here a note, Mr. Buck, I would like you to examine it. Do you recognize the handwriting?

A. Yes.

Q. And whose handwriting is it?

A. It's mine.

MR. VERVEER: I would like to have that marked as Buck Exhibit No. 7, please.

(Buck Deposition Exhibit No. 7 marked for identification by the reporter.)

MR. VERVEER Do you waive the necessity for getting an order to have the original appended to the deposition?

MR. MOEN: I will waive that.

Q. (By Mr. Verveer) Can you tell from examining this note approximately when it was written?

A. No. It says here, it has a date "Friday, 19 March," but I don't know what the year was.

Q. You have no recollection of having written this document?

A. I am certain it's mine because I recognize the handwriting and my ink, but I don't really have any recollection now, no.

Q. And who is Phil Corneil?

A. Executive vice-president of the Seattle First National Bank.

Q. And what is the Seattle First National Bank?

A. It's our strongest competitor and the largest bank in the State of Washington.

Q. Have you any idea what Mr. Corneil was reporting on in the first and second paragraphs, if you want to denominate them as such, of this note?

A. Well, I assume that he was simply telling us that the people from the Fed, who were going to have to make a recommendation with respect to the merger between the National Bank of Commerce and the Washington Trust Bank, had been in and talked to them on Friday the 19th of March in whatever year this is. I think that's all he told me.

Q. Would you agree that there is a strong probability that would be Friday, the 19th of March, 1971?

A. Yes, I expect.

Q. Getting down now to what we denominate as the last paragraph of this note, would you explain what that has reference to?

A. It seems to me now to mean that the Peoples Bank had increased the rate on a particular type of consumer savings certificate and that he was saying that they weren't going to stand still too long without reacting to this price increase.

Q. Did Mr. Corneil discuss his bank price activities with you very often?

A. No, I don't think that that is germane to this anyhow.

MR. HARTMAN: This is a merger case.

(Discussion off the record.)

THE WITNESS: My answer stands, no, he does not discuss this sort of thing with me.

Q. (By Mr. Verveer) Never?

A. I don't recall any such discussion. I don't even recall this, but I don't ever recall another one.

Q. This is the only incident you are familiar with, of Mr. Corneil or any other officer of the Seattle First National Bank discussing with you?

A. On rates?

Q. The price activities of their bank.

A. Of course not, we are perfectly aware that people go and stand around cocktail parties and talk about rates all the time, that's our business. So I couldn't possibly say that, but I will say definitely that I have never to my recollection talked to Mr. Phil Corneil about rates before or since.

Q. What about conversations apart from cocktail parties?

A. Well, I am going to refuse to answer on the grounds it might incriminate me.

Q. So we are absolutely clear at this point, Mr. Buck, you are making use of your Fifth Amendment rights in refusing to answer any further questions on whether you

discussed with the management of the Seattle First National Bank the question of rates charged in the banking business?

A. That isn't the question you asked me. What is the question?

Q. The question is do you have conversations other than casual-type conversations at cocktail parties with members of the management of the Seattle First National Bank involving bank rates?

A. No, I do not.

Q. What about with other state-wide banks?

A. I never discussed with them except in perhaps a casual way, as I stated, at a cocktail party, perhaps, when somebody says, "Are you going to raise your rate?"

Sure, we talk about it in those terms, but just in professional, casual bantering, certainly no serious conversation.

Q. What would you say is the incidence normally at social gatherings in which members of the larger banks in this state, top management of the larger banks of the state congregate?

A. Daily.

Q. What would be the context of these gatherings in a general way?

A. Entertainment for visiting dignitaries, all sorts of functions in the Chamber of Commerce and a myriad of other organizations, and every bank is represented in every one of these groups, and so it would be scarcely a day that I didn't see somebody from one of the top banks.

Q. And normally at such gatherings there would be some discussion in some casual fashion?

A. No, you are putting words in my mouth. I never said that at all. Normally there would not be, but occasionally there might be. We are extremely competitive in our rates, and I know that on occasion people from the Seattle First have said, "When are you guys going to drop your savings rate instead of making it tough for us" and things like that, and that's a discussion about rates and that's the kind of discussion that we have.

Q. Mr. Buck, what would they mean when they say, "instead of making it tough for us," what is the context of that? Will you explain?

A. It means we are tough competitors.

Q. But does that mean because your rates are high, that they have to maintain theirs at a comparable level?

A. I don't know what they mean, but that's what I would guess. They didn't, as a matter of fact, and that's why we are making it tough for them, I suppose.

Q. So the behavior of your bank impinges strongly on the behavior of the Seattle First National Bank?

A. We compete in the City of Seattle very strongly.

Q. And you also compete very strongly outside the City of Seattle?

A. Wherever we are represented, surely, wherever we are both represented, surely.

MR. VERVEER: That's all I have.

CROSS-EXAMINATION

BY MR. HARTMAN:

Q. Mr. Buck, you mentioned consideration of applying for branches in various communities in the State of Washington. Can your bank branch into a community without permission of the Comptroller of Currency?

A. No, sir.

Q. Now, the plaintiff has asked you several questions concerning helping and aiding the establishment of a bank such as Columbia Center National Bank. Now, to your knowledge, can a national bank be established without the permission of the Comptroller of Currency?

A. No, sir.

Q. Do you have to obtain a charter from the Comptroller of Currency?

A. Yes.

Q. And you have to satisfy certain requirements that he has in that connection?

A. Very definitely.

MR. HARTMAN: That's all I have.

REDIRECT EXAMINATION

BY MR. TORRE:

Q. Do you have any doubts that the Comptroller if need were shown would not grant you a branch charter

or a charter for a sponsored bank let's say to nominees or to sponsorees of a bank that you were promoting if you interceded like you did—let's strike that and begin again.

Do you have any doubt that the Comptroller would not approve or do you have any doubt he would approve or would not approve a branch application or charter application were need shown in a community for a branch or a new bank?

A. Well, I would hope that he would not deny a charter under that kind of circumstance because you said if need were shown, so I have no reason to believe that he wouldn't do what he is charged by law with doing and that would be to grant the charter provided the management and capital and the prospects for the bank were satisfactory.

Q. Has the Comptroller of the Currency been reluctant to grant charters for national banks in the State of Washington?

MR. HARTMAN: I don't believe he is competent to testify to that.

MR. TORRE: He certainly has experience, he can testify from his experience.

Q. (By Mr. Torre) To your knowledge and from your experience.

A. I think that the Comptroller requires a very careful showing of public convenience and necessity before he does, and in our experience, he certainly is not loose with his chartering facility, that is in my experience and the applications that I have had any dealings with.

Q. But if need is shown, economic growth or lack of banking facilities in an area, he would grant a charter?

MR. HARTMAN: He is not competent to answer that question.

Q. (By Mr. Torre) Do you believe—

A. In my experience where we have been able to demonstrate that need, he has granted applications for branches.

Q. On what grounds do you believe he would deny charter applications for branches for banks?

A. Well, again I am trying to put words in the Comptroller's mouth, but in my opinion he should be concerned about the quality of management, he should be concerned about the financial stability of the organizing group and of the community, he should be concerned about its ability to become profitable within a reasonable period of time. That is certainly quite a list, but certainly those would be of interest to the Comptroller of Currency.

Q. You say profitable, how profitable is profitable?

A. I don't know.

Q. A reasonable return?

A. Sure.

Q. Within a reasonable period of time?

A. Right.

Q. When you speak about the financial security of the community—do you mean—or the convenience—

A. Stability I said.

Q. What do you mean by that?

A. Well, I think it has to be a sound community with economic prospects for maintaining its existence. You wouldn't put a bank in a community that was going to be discontinued because of the sawmill that was the only employer was going to go out of business next year, for example.

Q. Spokane has sound economic prospects, in your opinion?

A. Spokane has been there for almost a hundred years, and I don't expect it to go away. I think it has sound economic prospects.

MR. TORRE: That's all.

(Witness excused.)

/s/ R. F. Buck
(Signature of witness.)

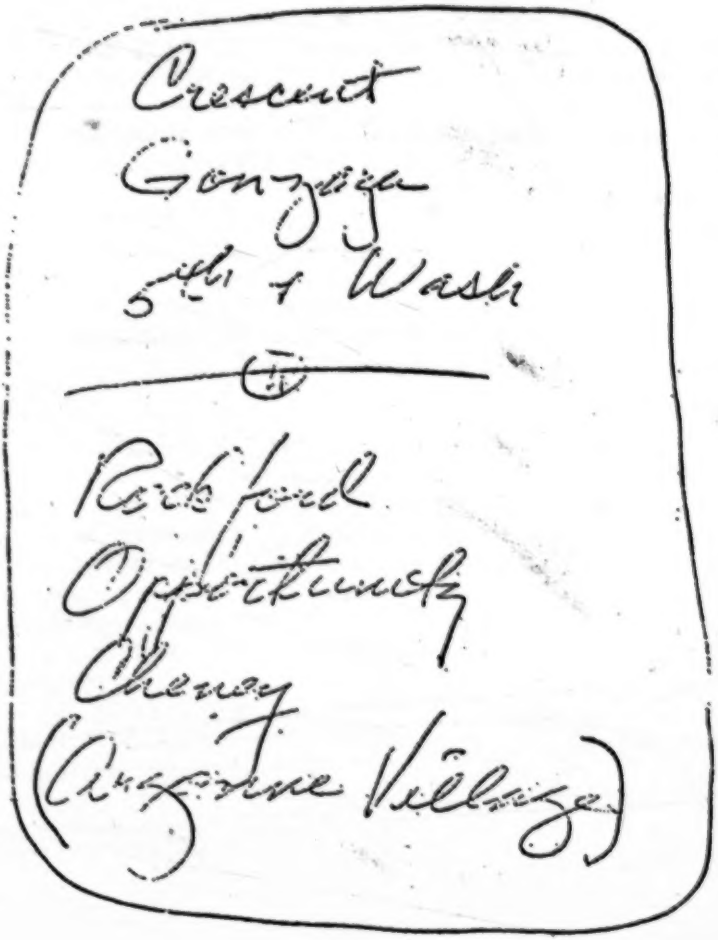
BUCK DEPOSITION EXHIBIT 1 IS REPRODUCED AS GX K-36 ON PAGE 1514.

BUCK DEPOSITION EXHIBIT 2 IS REPRODUCED AS GX K-37 ON PAGE 1516.

BUCK DEPOSITION EXHIBIT 3 IS REPRODUCED AS GX K-71 ON PAGE 1576.

BUCK DEPOSITION EXHIBIT 4 IS REPRODUCED AS GX J-32 AND J-31 ON PAGES 1407 & 1408.

Buck Deposition Exhibit 5



(Prem on dep)

N/W 750 ✕

plus 1100 @ 10% dep. assumed 11,000 ✕

1,850 ✕

2,000 ✕ @ 12%

150

plus 1650 @ 15% dep

2,400 ✕

Deposits Assumed 10,000 ✕

N/W 750 ✕

plus 1000 ✕ @ 10% on dep

1,750 ✕

N/W 750 ✕

plus 1200 @ 12% on dep

1,950 ✕

N/W 750 ✕

plus 1500 @ 15%

2,250 ✕

Earnings Basis

6-30-70 Net 144
Plus negative 15
159
double for year 159
318
add 10% for last ½ 32
Assumed annual 350 before tax
Net after 175M

175M × 10 = 1,750

175M × 12 2,100

175M × 15 2,625

Assumed basis

(a) 200M × 10 2,000
× 12 2,400
× 15 3,000

(b) 225 × 10 2,250
× 12 2,700
× 15 3,375

(c) 250 × 10 2,500
× 12 3,000
× 15 3,750

Asking: 1,500 per share or #4,125,000 for 2750 shares

a - With N/A @ 750 this price involves prem. on deposits of 33.75% assuming dep. @ 10 x N

b - With earnings projected at after tax figures:

(1) 175 N = 23.5 + times

(2) 200 N = 20.6 "

(3) 225 N = 18.3 "

(4) 250 N = 16.5 "

BUCK DEPOSITION EXHIBIT 6 IS REPRODUCED AS GX I-5 ON PAGE 1358.

BUCK EXHIBIT No. 7

Phil Corneil Phoned:

re: Fed was in to visit in re our merger on Friday 19 March—

Thought we should know—

Also he mentioned he couldn't "stand still too long" for action like Peoples raise in thrift bond interest rate.

[Illegible]

DEPOSITION OF MAXWELL CARLSON
TAKEN AUGUST 16, 1972

* * *

DIRECT EXAMINATION

BY MR. TORRE:

Q. State your name.
A. Maxwell Carlson.
Q. And your address, please?
A. My residence address is 1626 Federal Avenue East, Seattle, Washington.
Q. And are you employed by the National Bank of Commerce?
A. At the present time I'm employed as President and principal officer of the Marine Bancorporation, the holding company for the National Bank of Commerce.
Q. When were you employed in the National Bank of Commerce?
A. I joined their organization in 1929, became President of the National Bank of Commerce in 1948 and retired at the annual meeting as President and chief executive in 1971.
Q. In your term as President of the National Bank of Commerce, how did you view the goals of the bank in relationship to the entire State of Washington?
A. Well, you are interested in our objectives and so forth?
Q. That's right.
A. Well, I think in our organization our objectives, we had many of them, but three in particular which were more important were the customers and the areas we are privileged to serve, to do more for our staff, and if we take good care of our customers and areas we are privileged to serve and our staff, the stockholders will be taken care of.

It used to be in the olden days that a banker with his glass eye sat on his throne and a few people came to the banker, but the automobile has changed that way of life, now we operate department stores of finance and we go to the people, and there is a number of ways for

us to go in our organization, and we all like to think that we are growth institutions. One is to do a better job where we are with what we have got, another is occasionally have an opportunity to establish de novo offices in accordance with the laws of the State of Washington, and then occasionally we have an opportunity to inquire an existing institution for various reasons, and we are in business to make money, and we in management are hired by the directors to make the investment of the stockholders worthwhile.

Q. Is one of the goals of the bank to be represented or be in the major markets of the State of Washington?

A. Well, I'm a firm believer in diversification, and diversification is important and geographical diversification is important to us, and so I would say that that geographical diversification is very important, and expansion through the State of Washington enables us to augment our diversification and strengthen diversification.

Q. What means are available to you geographically, as you say, to diversify or expand the bank areas of services?

A. Well, we talked de novo and acquiring existing institutions, and the laws of the State of Washington, as I understand it, permit a bank, such as the National Bank of Commerce with headquarters in Seattle and King County, to establish branches in Seattle as the Comptroller of the Currency may approve, establish branches in unincorporated areas of King County and outside of King County we are permitted to establish branches in incorporated areas where there are no banks. So we don't have the freedom to expand de novo as in some other states where there are no restrictions.

There are so many restrictions here, and then when it comes to acquiring institutions, I would say that most of them that we have acquired over the years to the extent that I have been associated with it has been because so often old age has caught up with management and there has been no succession, the stock has ended up in estates that need their money.

Q. Is it important to the National Bank of Commerce to be represented in Spokane?

A. I'm a firm believer in competition, competition is the life of the trade, and if an organization is fearful of competition, they are fearful and their people aren't able to be competitive, and I am a firm believer in competition, and I think—and I like to think that in our management, we have people both on the firing line and at the staff level in Seattle to be competitive.

But it is important that we cover the State of Washington for diversification reasons, and then we are in both a retail business and the wholesale business, we operate a department store finance, and this diversification and expansion and growth enables us to specialize so that we can get into the specialized areas of installment credits and mortgage banking, international banking, investment banking and so forth.

Q. I don't believe you really answered the question specifically. The question was is it important for the National Bank of Commerce to be represented in Spokane?

A. Yes.

Q. And why is Spokane important?

A. All other major banks are represented in Spokane and we are willing to take on the competition in Spokane, and we feel that there is business available to us in Spokane if we are represented there. We are not represented there at the present time.

Q. In other words, you feel that it is necessary to stay abreast with the other major banks?

A. There is no such thing as a status quo, and we are out there slugging it out with not only the Seattle-First but the Western Bank Corporation and the Old National Bank and we just welcome the opportunity to slug it out with them.

Q Would you say that the Old National Bank, the Peoples National Bank, the Pacific National Bank and Seattle-First National Bank are your principal competitors in the State?

A. They are the biggest competitors, yes.

Q. And do you strive to stay abreast of them as far as services are concerned and as far as rates are concerned?

A. Well, we intend to be competitive. There is an expression, we don't intend to be undersold, and I think generally we learn from our customers whether we are competitive or not, and we can't afford to lose any business because if you lose a customer, it is not easy to replace him.

Q. Does the Seattle-First National Bank have more branches than the National Bank of Commerce?

A. Yes.

Q. Generally when were most of these branches established and how were they established?

A. Are you talking about the Seattle-First?

Q. Yes.

A. I'm not particularly knowledgeable about the Seattle-First except the record will show that as far as Seattle is concerned, there was a merger of the Seattle National Bank, the First National Bank, the Dexter-Horton Bank, the Metropolitan National Bank, the Georgetown State Bank, and so forth, and so going way back, they had a powerful nucleus of banks such as I have referred to, and over in the Spokane area during the depression, if I remember, they acquired the Spokane and Eastern, which was one of the dominant banks in that area, and they still refer, or used to anyway, refer to the Spokane and Eastern division.

Q. Do they use that Spokane and Eastern division as a regional headquarters?

A. I think they have several regional headquarters at the present time, and Spokane, I would assume, would be a regional headquarters for them.

Q. Would it inure to the benefit of the National Bank of Commerce to have a regional headquarters in Spokane?

A. I'm a firm believer in decentralization, but the bigger an organization becomes, it is sometimes necessary to have regional authority, and when it comes to the Seattle-First National Bank, they are big enough so that there is need for regional headquarters, and I think they have several of them.

Q. But do you think it would be beneficial to the National Bank of Commerce to have such regional headquarters?

A. As we grow and expand, I anticipate that, but that would not be my responsibility, if I anticipate that management will give some consideration to maybe a regional headquarters in Spokane, one in Yakima, there could be one down in Longview, I don't know, but as the organization gets bigger, the paperwork at the head office becomes more voluminous and some decentralization is necessary.

Q. Outside the City of Seattle does the Seattle-First National Bank have any greater number of branches than the National Bank of Commerce?

A. I would assume they have.

Q. Were most of these branches established as a result of mergers some time back?

A. I can't speak for the Seattle-First, but with the Seattle-First and the other large banks in the State, Peoples, now the Pacific National and the Old National, we have been competitive in the establishment of de novo branches trying to ascertain the areas in the State of Washington that are lacking in banking—in reserve banking either now or in the near future, and then I think we are all competitive. If there is a bank for sale, we would like to think that our correspondent relationship has been good enough so that we will be invited to be considered.

I might say that years ago the correspondent bank would also automatically sell out to their city correspondents.

Q. Do you mean when you say correspondents, do you mean country banks?

A. Country. And I can give an example, back in 1948 when I became President, the President of the Elmira State Bank called up, Mr. Johnson, and said, "My son is more interested in hunting and his gun collection than in running the bank, will you take the bank off our hands," and we said sure.

There was no premium in those days, we took the capital account and put it in the reserve, and if there was

any bad loans, charged it against the capital account, but then with the passage of time, the premium shows up 1%, 2%, the Comptroller of the Currency monitored that, and if because the competition were disposed to pay more than the Comptroller thought should be paid, he would turn you down, and I lost a bank over in Sunnyside, Central Washington, years ago.

I divide the State of Washington into Eastern Washington, Central Washington and Western Washington, and because I thought the Comptroller ceiling was 4%, our competitor took it away at 5.

Q. And do you seek to stay abreast of the other large banks with regard to even entering into markets by acquisition? In other words, they acquire banks and grow that way, would you seek to stay abreast of them?

A Well, yes, you have the specialized departments. We have an investment department, we have a correspondent bank department, and, of course, the correspondent bank department, their job is to see that the National Bank of Commerce enjoys as many correspondent relationships with other banks not affiliated with the branch systems as we can to enjoy the deposits, the business that they might direct to our investment department, the overline that we might carry. Maybe there might be a little bit of international banking also, and these others, and then we would like to think, frankly, that if the time comes for them to sell out for the reasons that I have mentioned, that we won't be overlooked and given an opportunity.

Frankly, over the years we never interfered with the independence of any country bank, and an investigation I think would prove that. As a matter of fact, I think we have acquired some institutions because we didn't interfere through the back door and always went through the front door if there was a possibility, and if in connection with our correspondent relationships we didn't want to get in a position for not showing an interest, someone else might acquire a bank.

But I think if you will look at our records, most of the banks that we have acquired have been long and well established.

Q. Do the acquisition or merger activities of the other major Washington banks have an influence upon the merger and acquisition activities of your bank?

A. We are all competitive, and I imagine our people —if one of our competitors for obvious reasons sometimes acquire a bank, we ask ourselves why didn't we have an opportunity, and sometimes it's a matter of price, and we feel we just can't afford it.

Q. Mr. Carlson, I'm going to show you a document here called "Information Memoranda" and the name at the top is Phillip Stanton, it is dated 4/28/70, and has the initials M.C. in the upper left-hand corner. Would you please look at that document?

A. Yes, I am aware of that memo.

Q. We will refer to that document as Carlson Exhibit 1.

(Carlson deposition Exhibit No. 1 marked for identification by the Reporter.)

Q. Did you write this memorandum?

A. As far as I'm concerned, it's obvious I dictated it, these are my initials and my secretary's initials.

Q. You did this in the course of your business as President of the National Bank of Commerce?

A. Occasionally I would dictate memorandums so that there would be no misunderstanding in the future, and I didn't want any misunderstanding in connection with what I dictated here.

Q. And you have read the document?

A. Yes.

Q. Would you explain what occasioned its writing and the meeting it discusses?

A. Well, I will just make these observations, it's the obligation of management to provide for succession, and if management hasn't provided for succession, they haven't done their job. Our organization has been getting bigger, and I was getting closer to retirement, this was dictated in April of 1970, my formal retirement date was December 1, 1970 but I carried through to the annual meeting in January of 1971, and ten years ago I began to worry about succession and the depth of management. It's not

quite as easy as in the olden days when a bank was a little commercial bank, now we are a large bank, a retail-wholesale, specialized departments, and liquidity used to be confined to assets, management-related entirely to the bond account, now it's asset management, and I mean liquidity relates to assets and liability management, and for a number of years I have worried about my responsibility as chief executive to leave the bank with some depth in management, and we tried awfully hard over the years to promote from within. But as you grow, you just can't do it fast enough, and sometimes in specialized departments like the trust department and national banking, you have to go out and hire people.

So about ten years ago, it might be twelve years ago, I don't know, I brought Bob Buck in, he had been deputy administrator with the Small Business Administration, and we thrive on small business in addition to big business, so I brought him in, and about twelve years ago, and he is now a Senior Vice President, he was here this afternoon, about five years later I brought in Faragher as Executive Vice President. I never promised him anything, but if he could perform, he would end up as President, and he did, and I saw in the Washington Trust Bank a professional banker in Phil Stanton and also in his bank the ability for depth in management, and I felt that we needed a professional banker like Phil Stanton in addition to Faragher and Bob Buck as examples, and it was further incentive for us to look at the Washington Trust. It had been a correspondent of ours for a long, long time, about 1969 I had some conversations with Mr. Stanton, not negotiations, just some conversations, and I sensed that there might be an opportunity for me to talk to him.

As a result of that I went back and visited with the Comptroller of the Currency to get a sense of direction, and when I sensed that, I had conversations—continued conversations with Mr. Stanton and his family, might result in a merger, that the office of the Comptroller of the Currency, certainly they weren't negative, no promises were made, but it was important that I spent my management of the National Bank of Commerce as I got close to

retirement, and so here was an opportunity to acquire Phil Stanton and also an opportunity to serve the retail and wholesale business in the City of Spokane.

Q. So, in brief, you viewed Phillip Stanton as a potential top executive of your bank?

A. I made some promises and commitments, and I dictated them for the record.

Q. And you thought it would be good for the National Bank of Commerce to establish a Spokane headquarters for eastern Washington in addition to the Seattle headquarters as it states in the third paragraph of the document?

A. Yes. I can visualize the time coming, I won't make that decision, when there might be a Spokane headquarters, Yakima headquarters, and maybe a couple of others depending on the size of the institution, and the decisions of management at that time because all management do things a little bit differently.

Q. I'll give you another document similar to Carlson Exhibit No. 1, we will call it Carlson Exhibit No. 2, and I call your attention to the fourth paragraph and the fifth paragraph.

(Carlson deposition Exhibit No. 2 marked for identification by the Reporter.)

Q. Does the statement in the fourth paragraph of that document represent a fair representation of how you viewed the State of Washington?

(Brief pause.)

A. It sounds like my phonograph record.

Q. I neglected to ask you, this is a document that you authored?

A. Yes.

Q. In the course of your business as President of the National Bank of Commerce?

A. Yes.

Q. The fourth paragraph you mentioned that you had an opportunity to enter Walla Walla via the purchase of the Ankeny Bank, but you preferred to continue your relationship with the Baker-Boyer Bank hoping some day you could enter Walla Walla through them?

A. Well, it's a little bit like a marriage, I guess any of us can walk down the street and pick someone up and get married, but we are a little choosey, and I would say, to be specific with regard to Walla Walla, the second largest bank, I think it was the First National Bank of Walla Walla, the Ankeny Bank was for sale—I'm attempting to say now 25 years ago, and it also carried with it the Bank of Dayton, and we could have—we were invited—I think I was a shavetail in those days, and my recollection is we were invited to show an interest, and we didn't because of the close correspondent relationship we had with the Baker-Boyer Bank and the loyalties that were involved and the feeling that maybe some day that bank might be sold when old age caught up with management and when the stock was in the hands of the estate, and so we passed up an opportunity that was like marriage because of a bank with whom we had a very close relationship, we still have, and take our chances on the future.

Q. Do you still consider a possibility that your bank will acquire the Baker-Boyer Bank at some time in the future?

A. It may be sold some day, but my crystal ball isn't very good. We have been waiting for 25 years, and it continues as an independent and we haven't interfered with that independence. We have a very nice correspondent relationship. But we like to think that if some day they sell out, that we won't be overlooked and we will be given an opportunity to consider it.

Q. Let me show you Exhibit—we will call it Carlson Exhibit No. 3, a credit memoranda dated 4/22/69, with the initials M.C. in the upper left-hand corner, would you please look at that?

(Brief pause.)

(Carlson deposition Exhibit No. 3 marked for identification by the Reporter.)

Q. Mr. Carlson, do you recognize that document?
A. Yes, sir.
Q. Did you author the document?
A. Yes, sir.

Q. Did you author it in your capacity as President of the National Bank of Comerce?

A. Yes.

Q. I direct your attention to the third paragraph of that memorandum, does it represent a fair representation of how you view the State of Washington from a banking point of view, one of the points?

A. This is the third paragraph?

Q. The third paragraph beginning, "I also pointed out to him—".

A. Yes, I think if this merger had gone through, — if this merger had gone through prior to my retirement as President of the National Bank of Commerce, and I can't speak for the succeeding management, I had in mind that we would have a Spokane headquarters, we would have a Yakima headquarters in addition to the Seattle headquarters because I look upon this State as Eastern Washington, Central Washington and Western Washington.

Q. Would the establishment of an Eastern Washington headquarters facilitate and make more efficient the operation of the bank on a State-wide basis?

A. Well, frankly, the third floor of the headquarters of the National Bank of Commerce is becoming too burdened with paperwork, and just when Mr. Faragher is going to do something about it, I don't know. But the paperwork at the head office in connection with our decentralization is becoming burdensome.

Q. So something will have to be done to disperse the operations that are on the third floor of the bank?

A. Well, even in connection with the Bank of America I think about two years ago they established—I think it was a dozen regional headquarters. Of course, each one is as big as the National Bank of Commerce, but the bigger you get, the more burdensome the paperwork becomes at the head office, and there has got to be a certain amount of decentralization.

Q. Would the establishment of a headquarters in Spokane facilitate your ability to operate as a correspondent bank for country banks in Eastern Washington, Northern Idaho and Western Montana?

A. All I can say is that our correspondent bank and department says that if we were in Spokane, we could expect business from Montana and the area such as now flows to the Spokane and eastern division of the Seattle-First.

Q. Isn't it true, Mr. Carlson, that you have a personal investment and you have had for some time a personal investment in the Washington Trust Bank?

A. Yes.

Q. How large is the investment and why did you make it?

A. Frankly, at the moment I have forgotten how many shares Mrs. Carlson and I have, but that's a matter of record.

Q. Ballpark figures will be fine. Just give us a ballpark figure.

A. Well, at the moment I don't remember, but it's a matter of record, and for selfish reasons, I sensed in the Washington Trust Bank excellent management. I have known Mr. Stanton's father over the years, and he ran the kind of bank and his son now runs the kind of a bank that I like similar to the way we run a bank, and it is run in a good, sound manner, and when I had an opportunity to buy that stock, I just didn't see how I could lose over a period of time.

Q. So would you say that your purchase of the stock of Washington Trust Bank evidenced confidence in the bank and its future?

A. Yes.

Q. Would it also evidence your confidence in the future of the area served by the bank?

A. Yes.

Q. Do you think the Spokane area still maintains that promising future?

A. Yes. Regardless of what happens in connection with this merger, I intend to keep the investment because it is a good investment.

Q. You said that you will maintain the investment regardless of what happens with this merger of Washington Trust Bank and the National Bank of Commerce, are you confident the National Bank—I beg your pardon, are

you confident the Washington Trust Bank will continue to be a growing and successful institution?

A. I didn't buy that investment originally in anticipation of a merger with the National Bank of Commerce, I bought it strictly as a bank investment that would stand on its own feet.

Q. Well, do you have confidence, though, that the Washington Trust Bank will continue to grow and prove your investment sound?

A. Well, I would say this, that it is going to find itself more—it is going to be more difficult to be as profitable as I originally anticipated because of the competition from the Seattle-First, the Old National Bank, which is under the new head of Steen, the entrance of the Pacific National into Spokane, the entrance of, I would say, the Washington Mutual Savings Bank into Spokane. They are up against far stiffer competition than when I first bought my investment.

Q. Have they done well despite the entry of these banks?

A. I think they have done as well as could be expected under the circumstances.

Q. Do you have any reason to believe that they couldn't withstand this competition and grow to meet it?

A. They are going to find it continually more difficult as a smaller bank to meet the competition that they are faced with now because for all practical purposes, it is competition unlimited and there are no holes barred in Spokane.

Q. Do you think this increased competition would force it to become a more aggressive competitor in its market and perhaps in other markets?

A. Well, I can't speak for the management of the Washington Trust Bank. All I know is that it is a good, sound bank, well managed. Just how they are going to perform in the future, I can't pinpoint.

Q. But you have indicated you have confidence in its top management, you indicated that you have confidence in the area it serves, that it will continue to grow, and you have acknowledged that it continued to grow despite increased competition in its area, so, therefore, you don't

have any reasons therefore to doubt that it will continue to expand?

A. Frankly, I don't expect it to grow as fast in the future as it has in the past because of the increased competition.

If I might comment that it has been primarily a commercial bank, they haven't been active in the installment credit field, they haven't been active in the mortgage field, they haven't been active in the correspondent bank field, they have been a first class commercial bank. But to diversity and become active in those other fields against the competition that exists, it is very difficult for a bank of its size to do.

Q. How would it increase its ability to diversify? How could it increase its ability to diversify and meet this greater competition?

A. Well, I would assume first of all it needs more—it is going to need more financial resources and it is going to need more human resources, but that's up to them.

Q. Could it get more financial resources by issuing additional stock?

A. I can't comment on that, that would be speculation on my part.

Q. You mentioned several institutions that entered the Spokane market, one of them that was mentioned was the Pacific National Bank which was formally the National Bank of Washington, how did that bank enter into the Spokane market?

A. Well, the National Bank of Washington acquired the Spokane National Bank, a small bank, I have forgotten what its deposits were, but only maybe three or four million, and I'm sure that the National Bank of Washington and Pacific now are terribly disappointed with the lack of success that they have enjoyed in the Spokane market.

Q. Why have they had a lack of success in that market in your opinion?

A. I frankly don't know.

Q. Over the period of time that you have had the investment in the Washington Trust Bank, you have indicated that there had been the addition of new competitors,

isn't it true that the only new competitors that have entered the market are the Pacific Naional Bank, formerly the National Bank of Washington, and the American Commercial Bank?

A. Yes, and the Washington Mutual Savings Bank.

Q. Has that also entered the market? That is a savings bank and not a commercial bank, is that correct?

A. That's a savings bank, but most of the banks these days are department stores of finance and operate in the mortgage market.

Q. Do the savings banks offer the same type of services as the commercial bank offers?

A. They are constantly getting legislation which enables them not only to operate as mortgage bankers but as installment credit bankers.

Q. But do they now offer the same trust services that the commercial banks offer?

A. They are competing with the commercial banks now you might say in the small loan business in addition.

Q. But not what you call the same department store services that commercial banks have?

A. Put it this way, the big tank let's say is in the retail business and the wholesale business, of course, the Washington Mutual isn't in the wholesale business, but the savings banks more and more are getting into the retail business.

Q. Does it make commercial and industrial loans?

A. That would be in the wholesale business.

Q. That would be a commercial bank?

A. Yes.

Q. Does it accept demand deposits?

A. No.

MR. TORRE: That's all.

MR. HARTMAN: No questions.

MR. MOEN: No questions.

(Witness excused.)

/s/ Maxwell Carlson
(Signature of Witness.)

CARLSON DEPOSITION EXHIBIT 1

INFORMATION MEMORANDUM

NAME Phillip Stanton BRANCH

Date Source	Comments or Sundry Information
4/28/70 MC:1p	Tuesday morning, I flew to Spokane, leaving the airport at 8:45 a.m., and was met by Phil Stanton at the Spokane airport. He drove me to his home where we visited, had luncheon and visited again until about 2 o'clock. Then he took me for an hour's drive around Spokane and returnd me to the airport to take the 4:45 p.m. flight back to Seattle. I told Phil in anticipation of my retirement at the end of this year, it was important that I strengthen our organization and in my opinion, he was the man I needed—both short-range and long-range. I told him that I could visualize if he came with us that my recommendation to the Directors would be that Bob Faragher become Chairman and Chief Executive Officer, Andrew Price become Chairman of the Executive Committee and he, Phil Stanton, become President. I referred to Faragher's age being 58; Andred Price being 47 or 48; Bob Buck 53 or 54 and he, Phil Stanton mentioned he was now 40. In addition, I observed that in my opinion he had all the qualifications of a first-class, professional banker not only to provide add'l management for the National Bank of Commerce but also to help look after my substantial investment in the organization. It was evident from Phil Stanton's lengthy reply to me that he is terribly intrigued and very interested in associating with the National Bank of Commerce although he worries a little bit about the possible reaction of his staff and the com-

Date Source	Comments or Sundry Information
4/28/70 MC:1p	munity to an outside association with the headquarters in Seattle in spite of the fact that merging the Washington Trust Bank with the National Bank of Commerce could mean the establishment of a Spokane headquarters for eastern Washington in addition to the Seattle headquarters. When I commented that I deeply respected his concern for his sister and his apprehension about entertaining anything that might impair his happy domestic situation, and suggested that it would probably be best that I go ahead and make some other plans, improvising if necessary, he commented that he might be carrying his concern about his sister and his marriage too far. I then suggested that he discuss it further with his wife and following my return from Europe, when he was in Seattle for the June or July meeting of the Federal Reserve Ad- * * *

CARLSON DEPOSITION EXHIBIT 2
IS REPRODUCED AS GX F-23 ON PAGE 1273.

CARLSON DEPOSITION EXHIBIT 3

CREDIT MEMORANDA

NAME Washington Trust Bank BRANCH

Date Source	Comments or Sundry Information
4/22/69 MC:1p	Last Saturday afternoon by appointment, Phil Stanton called at my home on Federal Avenue East where he visited for about an hour between 3:30 and 4:30 p.m. He had flown over from Spokane to attend a meeting and his plane had been delayed. The purpose of the visit was to pursue some previous conversations we had had regarding the future of the Washington Trust Bank and his association with the National Bank of Commerce as a senior officer in which he had already indicated a keen interest. I told Phil that, knowing him as well as I do, I would still be interviewing him regarding an association with our bank even if he were employed by another bank other than his in Spokane. However, under the circumstances, I could not disassociate him with the Washington Trust Bank and our interest was both in him and in his bank. He then inquired what I might have in mind more specifically regarding his bank and his future with us. I replied that someday we should be in Spokane and a union of the Washington Trust Bank with the National Bank of Commerce could now be accomplished through payment with the common stock of Marine Bancorporation, our holding company. Heretofore, it would have been necessary for us to consider a cash purchase which would have been rather improbable or an exchange with National Bank of Commerce stock resulting in a small minority interest with a limited marketability.

Date Source	Comments or Sundry Information
4/22/69 MC: 1p	I also pointed out to him that our situation here in the state of Washington with the Cascade Mountains dividing the state into Western Washington and Eastern Washington is not dissimilar to California with San Francisco representing Northern California and Los Angeles representing Southern California. If we could put our two banks together, I could visualize Spokane as our Eastern Washington headquarters with Seattle as the Western Washington headquarters with the Chairman initially located in Spokane and the President, the Chief Executive Officer, in the Seattle headquarters. I told Phil that if he is as capable as I think he is, I would expect him to transfer eventually to Seattle from Spokane. Phil Stanton replied by saying, "Mr. Carlson, I am not without ambition and I am very much interested in your thoughts regarding me and my bank." I inquired, "Have you talked to your father about this?" He replied in the affirmative by saying, "Yes, my father says the decision is entirely up to me." He also seemed to wax enthusiastic about our holding company since its recapitalization and the enviable position it now occupies. I was also advised that the Stanton family owns 62% of the Washington Trust Bank and the father is now a very small stockholder. The tenor of the conversation indicated there is no question about Phil Stanton's interest in associating with the National Bank of Commerce. At 4:30 it was necessary for him to leave to keep another engagement. I told him that I was going abroad for almost two months and perhaps while I was gone arrangements could be made for him to meet and become acquainted with a few of our directors who constitute an

Date Source	Comments or Sundry Information
4/22/69 MC: 1p	Advisory Committee to me. I named Dean Eastman, Keith Fisken, Prentice Bloedel, Evan McCord and Wylie Hemphill. He said he would welcome such an opportunity.

DEPOSITION OF RALPH J. STOWELL
TAKEN AUGUST 16, 1972

* * * *

DIRECT EXAMINATION

BY MR. TORRE:

Q. State your name, please, in full.
A. Ralph J. Stowell, S-t-o-w-e-l-l (Spelling).
Q. And your address, please?
A. Home or business?
My home is box 24, Port Blakely, Washington, 98110.
Q. Are you, or have you been, an officer of the National Bank of Commerce?
A. I am not now. I have been, yes.
Q. When were you an officer?
A. Until October 1, 1968.
Q. When were you appointed an officer?
A. I am not sure, but I am going to guess at about 1935.
Q. Prior to your retirement as an officer, what was your position?
A. I was Executive Vice President of the bank.
Q. What were your duties as Vice President?
A. I was the senior credit officer. That was my general duty but I did have a part in management.
Q. What were your duties as senior credit officer?
A. I was chairman of the senior loan committee that passed on, really, all the credits of the bank.
Q. That passed, you say that passed on all the credits, the smallest loan to the largest?
A. Through committees whose chairmen of the committees, I think, would evolve up to the senior credit officer one way or the other, not directly but one way or another.
Q. Are you saying then that you had indirect supervision over all the loan activities of the bank and direct approval only on some?
MR. HARTMAN: Excuse me, I have a little trouble hearing.
MR. TORRE: All right.

BY MR. TORRE:

Q. (Continuing) Are you saying you only had limited or indirect approval over smaller loans and direct approval over larger loans?

A. Yes.

Q. What was the cut-off as to the dollar amount of loans when a loan reached the amount necessary for your approval?

A. Well, we have changed a couple of times, but, as I recall, loans of over $25,000 were either confirmed or approved by the senior loan committee of which I was chairman.

Q. You mentioned that you participated in the management of the bank.

Will you describe your duties in that area?

A. Well, as an Executive Vice President and one of the senior officers, many of the decisions either came to me by hearsay, or I directly participated in them.

Q. Decisions in what area?

A. Oh, I would say in the general banking area. That would have to do with interest rates, new branches, personnel.

Q. Were you involved in consideration of mergers and acquisitions?

A. In some, yes.

Q. When you say "in some", which ones were you not involved in, and why were you not involved in them?

A. I am not sure which ones you are specifying. The only ones I were directly involved in, when you speak of mergers, is the possible merger with the Washington Trust Bank. There were some others that did not go through that I was involved in.

Q. And which ones were those?

A. There was the bank at Enumclaw that belonged to a Mrs. Carpenter. I forget the name of the bank now.

Q. Did the National Bank of Commerce acquire that bank by merger?

A. No, they did not.

Q. Did another bank acquire it?

A. Yes.

Q. Which bank was that?

A. The Seattle Trust and Savings Bank.

Q. Did you serve on other management committees or committees of the Bank other than the credit or loan committees?

A. Yes, I am sure I did.

Q. Which ones did you serve on?

A. I served on the International Credit Committee, on the Branch Expansion Committee, on the Directors' Advisory Loan Committee, although that was a director function, and not a bank management function.

That is all I recall.

Q. Did you serve on the Branching Committee?

A. On the Branch Expansion Committee, yes.

Q. Did you serve in any managerial capacity, or other capacity in connection with the Marine Bancorporation?

A. Not while I was an officer of the bank.

Q. Well, when did you, sir?

A. Let's see, I went with Marine approximately in April of 1969, about six months after I retired, and I was a Vice President, and I later was an Executive Vice President.

Q. What were your duties as Vice-President and later as Executive Vice-President with the Marine Bancorporation?

A. In both cases it was a part-time position, four days a week and about six hours a day, but my duties were primarily as liason officer between the Marine Bancorporation and the Coast Mortgage Company, which we had just acquired.

Q. Were there any other duties?

A. Yes, I worked on a couple possible acquisitions of banks.

Q. Were these acquisitions to be by the holding company or by the National Bank of Commerce?

A. I would say they would be by the bank because they would be branches of the bank.

Q. And which possible acquisitions were they; what were the banks?

A. Outside of the Washington Trust Bank there was the Bothell State Bank, which was owned by the Werthingtons.

Q. And where is the Bothell State Bank located?
A. It was in Bothell, Washington.
Q. In what county is that?
A. That is in King County.
Q. How far from Seattle?
A. 15-20 miles.
Q. Could you describe what duties you performed in connection with this considered acquisition of the Bothell State Bank and what was the result?
A. On two occasions I met with the President and discussed the possibility of an acquisition and the price. The result was another bank purchased them.
Q. What bank was that?
A. The Pacific National Bank of Washington originally, and then that deal fell through, and then the Peoples National Bank of Washington purchased them.
Q. Why was the National Bank of Commerce unable to purchase the bank?
A. They got a better deal from the other banks.
Q. What was the offer that the National Bank of Commerce, or Marine Bancorporation, made to the controlling stockholders of the Bothell State Bank?
A. We never got around to the point of making an actual offer.
Q. Why didn't you make it?
A. Well, there was some considerations as to the job of the President and his brother, the next senior officer, that they wanted to discuss, and actually kept putting off the time when we would actually get down to figures, and before we reached that time they had an offer from another bank and called up and said they had received another offer and they were going to take it.
Q. Was your failure to acquire the Bothell State Bank the result of the Marine Bancorporation's or the National Bank of Commerce's lack of financial resources?
A. No, I don't believe so.
Q. Do you feel that the bank or the holding company had the resources to make the acquisition?
A. Yes.

Q. Were there any other acquisitions or mergers that you considered while working as an officer of the Marine Bancorporation?

A. Just about the time I was retiring from the Bank, I'm not sure whether it was then or when I was first an officer of Marine, I did have a couple of discussions with the Farmers and Merchants bank of Rockport.

Q. Is that the same as the Farmers and Merchants Bank of Rockford?

A. Rockford, correct.

Q. Is that bank headquartered in the incorporated area of Opportunity, Washington?

A. That is my understanding, but I am not sure.

Q. What were your duties as a member of the Branching Committee of the National Bank of Commerce?

A. Primarily to sit in on the committee and listen to the presentation of possible branch locations.

Q. How were these presentations made?

A. They were usually made by our Properties Officer who would say, and they were practically all in King County, who would have a map of a location and some other statistical information and a prospectus of what the deposits and loans might be generated at that location.

Q. Did you consider sites outside of King County?

A. No, we never considered any sites outside of King County because there was no way that we knew of that we could get in without making a direct purchase of a bank.

Q Mr. Stowell, what does the term "unit bank" mean?

A. I think generally the word has been kicked around a lot but "unit bank" to me means one banking location.

Q. Does it have any meaning other than that within your experience as a Washington Banker?

A. I can't think of any.

Q. Do your knowledge have banks in the State of Washington caused to be organized or sponsored the creation of banks in order to establish branches?

MR. MOEN: I think, Mr. Torre, you should define the word "sponsor" when you use that word. That has a number of dictionary meanings. Let's get down to actually what you are talking about.

BY MR. TORRE:

Q. (Continuing) Mr. Stowell, how do you understand the word "sponsor" when you used it in connection with banking?

A. Well, I think just what the word means, to promote.

Q. And what does "promote" entail, with regard to banking?

A. Do you mean the establishment of a bank?

Q. Yes, I do.

A. Well, I would say it would help them get organized.

Q. Or would you understand "promote" to mean inspiring and causing the organization of a bank?

A. I would think "promote" might do that more than "sponsor" would. I can see in sponsoring where someone else would promote it and you might sponsor them by giving them all the help you could to get started.

Q. To your knowledge then have banks in the State of Washington promoted the organization and chartering of banks in order to establish branches by subsequently acquiring such banks?

A. Anything I said on that would be purely hearsay. I have no direct knowledge of it.

Q. Mr. Stowell, were you ever the director of any bank in the State of Washington?

A. Yes, the National Bank of Commerce.

Q Were you ever considered as a possible director for any other bank in the State of Washington?

A. I heard that I was, yes.

Q. And what bank did you hear that you were?

A. Columbia Center National Bank.

Q. And from whom did you hear that you were being considered?

A. Let's see, I think from one of our—one of my associates who was being helpful to the people who were organizing the bank.

Q. And which associate was that, Mr. Stowell?

A. That was—let me go back a little now to that other question.

Well, I will leave it stand. I think he said that I might be considered as a director.

I think it was Andrew Price, Jr.

Q. What is Mr. Price's position with the National Bank of Commerce?

A. He is Chairman of the Board.

Q. Was the Chairman of the Board at the time he suggested to you you were being considered as a director of the Columbia Center National Bank?

A. Yes, he was.

Q. Why would he consider you as a director of that bank?

MR. HARTMAN: I don't believe he testified Mr. Price was considering him. He said he may.

BY MR. TORRE:

Q (Continuing) Was Mr. Price considering you as a director of the Columbia Center National Bank?

A. Yes, I think he was.

Q. Why was Mr. Price considering you as a director of the Columbia Center National Bank?

A. I thought he felt that I might be helpful in credit matters of the bank.

Q. What was Mr. Price's connection with the Columbia Center National Bank?

A. I don't think he had any direct connection. I think he was helpful. He was helpful to the people who were organizing the bank, who were very valuable customers of the bank, incidentally.

Q. And who were they?

A. The Allied Stores Corporation.

Q. And the Allied Stores Corporation wanted a bank to be established in Columbia Center?

A. Yes.

Q. Why did they want that?

A. Well, they felt that a bank was necessary in a shopping center of that size.

Q. What was their connection with the shopping center?

A. Well, of course, they have one of the principal stores there. The balance of their connection would only

be hearsay. It would come directly from someone that was acquainted with it.

Q. Why did they contact Mr. Price?

MR. TORRE: Strike that.

BY MR. TORRE:

Q. (Continuing) Did the Allied Stores contact Mr. Price to establish a bank in Columbia Center?

A. I believe so.

Q. Could the National Bank of Commerce establish a branch in Columbia Center?

A. No way that I know of.

Q. Why then did the Allied Stores contact the National Bank of Commerce to establish a bank in Columbia Center?

MR. MOEN: Well, counsel, I have no objection to Mr. Stowell answering, if he knows the answer, but he cannot very well say what Allied Stores had in mind for that matter. I suggest your interrogation be limited.

MR. TORRE: Do you have an objection to the form of the question?

MR. MOEN: Yes, I do.

MR. TORRE: Is it unclear?

MR. HARTMAN: It is unanswerable.

MR. TORRE: Let the witness answer it.

MR. MOEN: If Mr. Stowell knows the answer, I have no objection to his answering.

A. Will you repeat the question?

BY MR. TORRE:

Q. In your opinion, to your knowledge, why did the Allied Stores contact Mr. Price to establish a bank in Columbia Center if Mr. Price could not branch directly into Columbia Center?

A. I don't know directly but Allied Stores are one of our very valuable accounts and I think, naturally, they would come to one of their prime banks.

Q. What did Mr. Price tell the Allied Stores when they requested that he establish a bank in Columbia Center?

A. I really don't know. I wasn't in the negotiations.

Q. Is it true, Mr. Stowell, that Mr. Price and other officers of the National Bank of Commerce, yourself included, were directly involved in helping to organize this unit bank in Columbia Center?

A. It wasn't true as far as I was concerned. I was merely asked later on if I would be interested in becoming a stockholder and possibly a director.

Q. Did you become a stockholder?

A. Yes.

Q. Why did you become a stockholder?

A. Well, that was shortly before I retired from the bank. I would say it was within six months of when I retired in 1968 and after 41 years in banking I didn't want to give it up entirely. You get a little sentimental after all those years and you sort of like to keep your finger in the business and I thought maybe this was a way I could be helpful and I thought I might even serve as a director.

Q. Didn't you testify that you remained as an officer of Marine Bancorporation after retiring as an officer of the National Bank of Commerce?

A. Yes, I did. I was elected an officer six months after I retired. I was not a—I think I was an officer at that time.

Q. How large an investment did you make as a stockholder of Columbia Center National Bank?

A. $7,200.

Q. Were you one of the charter stockholders of the bank, original stockholders of the bank?

A. To my recollection the bank was originally started before by a group that was having trouble and I think I was offered a little stock on the second go around.

Q. Would you explain the background of the statement with regard to the group as having trouble?

A. Well, this is purely hearsay and memory so I would like to put it as my personal opinion that there was a—

Q. (Interposing) Mr. Stowell, I want you to testify to your knowledge.

A. Okay, my knowledge is there was an original group that attempted to put in a bank and they had some trouble with their charter.

Q. Did the National Bank of Commerce have any connection with that group?

A. Not to my knowledge directly.

Q. You do not know anything about the National Bank of Commerce being involved with that group?

A. No, I do not.

Then Allied Stores came to us to get some help, and the bank, or some of the officers of the bank, did become involved at that point.

Now, if they were in the original one, I have no knowledge of it.

Q. Who offered you stock in the Columbia Central National Bank?

A. Andrew Price.

Q. And what did he say to you when he offered this to you?

A. He asked me if I wanted to make an investment in the bank.

Q. What did he say to you about that bank?

A. I don't recall him making any specific claims about the bank.

Q. You are saying you made a $7,200 investment and you don't recall why you made it?

A. No, I am not saying that. You are asking me what he said to me. I made up my own opinion on it.

Q. Why did you make the investment?

A. I made the investment because I wanted to stay active in the banking business and I thought I might get a reasonable return on it.

Q. Why did you select the Columbia Center National Bank for that?

A. Because the Allied Stores were sponsoring the center and they are a very fine national organization and they have been successful in shopping centers.

Q. Did the Allied Stores have any banking experience?

A. Not to my knowledge.

Q. Did they have any expertise in the operation of a bank that led you to believe that they would insure the success of the Columbia Center National Bank?

A. No, but I don't think that is a fact in the case. In other words, if the center is there, I would think the bankers make the bank a success, and not the manager of the shopping center.

Q. Mr. Stowell, you just told me you made the investment because the management of the shopping center was the Allied Stores, that the Allied Stores was involved in the management of the shopping center.

A. That is right.

Q. And then you just told me that the management of the shopping center would not make the bank a success.

A. I didn't say that.

MR. TORRE: Read the question.

(The following was read by the Court Reporter:

"Q: Did they have any expertise in the operation of a bank that led you to believe that they would insure the success of the Columbia Center National Bank?

A: No, but I don't think that is a fact in the case. In other words, if the center is there, I would think the bankers make the bank a success, and not the manager of the shopping center.")

MR. TORRE: And then read the last question.

(The following was read by the Court Reporter:

"Q: And you just told me that the management of the shopping center would not make the bank a success.")

BY MR. TORRE:

Q. Aren't you saying then that the success of the bank depends upon the banker and not the manager of the shopping center?

A. Yes, sir.

Q. What factors then with regard to the bankers that were organizing the Columbia Center National Bank led you to believe that the bank would be successful?

A. Well, I knew who the manager was going to be.

MR. VERVEER: Mr. Stowell—
MR. TORRE: Just a minute. Let him finish.

(Brief pause.)

A. (Continuing) I knew a couple of the organizers and I thought they would be helpful to the bank.

(Brief pause.)

BY MR. TORRE:

Q. When did you decide to make this investment?
A. Sometime the latter part, or sometime in, 1968.
Q. What bankers were involved with the Columbia Center National Bank at that time?
A. Well, when you speak of bankers at that time that I made the investment, they were considering a very capable, or who I thought was a very capable banker from Alaska. I can't tell you what his name was, and Dean Loney, who was the attorney over there and, while he is not a banker, he is a very experienced business man as well as an attorney.
Q. But Mr. Loney is not a banker?
A. Well, he is a Chairman of the Board at this time.
Q. Would you invest in a bank Mr. Loney was running by himself?
A. I don't know. I would have to think that one over and talk to him a little bit. I might.
Q. Does he have any experience in banking at all?
A. I can't answer that.
Q. You made an investment in a bank based on Mr. Loney's experience and you don't know whether he had any?
A. I didn't say I made it entirely on his experience. I said he was an experienced man and I said there was an Alaska banker coming down to run the bank who was an experienced banker.
Q. What was his name?
A. I will have to check the records.
Q. Isn't it true that the only people involved in the Columbia Center National Bank as bankers at that time were people who were officers of the National Bank of Commerce?

A. I believe I was the only officer that made an investment.

Q. Therefore, you are the only banker that was directly involved at that time?

A. No, there was a retired officer of the bank.

Q. Of what bank?

A. Of the National Bank of Commerce.

Q. And what was his name?

A. His name was Wilbur McGuire.

Q. You and Mr. McGuire, at the time of your investment, were the only bankers involved in the Columbia Center National Bank organization?

A. Without looking at the list of people, I could not answer that.

(Brief pause.)

MR. TORRE: Will you stipulate to the authenticity of those documents?

MR. MOEN: Yes, I will stipulate these are part of the minutes of the meeting they purport to be.

MR. HARTMAN: What are you going to do about copies?

MR. TORRE: You have copies of those.

MR. HARTMAN: Are you going to attach them to the deposition, or what?

MR. TORRE: Yes, I am. I can arrange for copies later.

MR. HARTMAN: Yes, I would like to know what you use.

(Stowell deposition Exhibits 1 and 2 marked for identification.)

BY MR. VERVEER:

Q. Mr. Stowell, I have here a document—

MR. MOEN: Just a minute. I will object to two lawyers interrogating. The interrogation has to be conducted by a single lawyer.

MR. TORRE: The objection is noted for the record.

BY MR. VERVEER:

Q. (Continuing) Mr. Stowell, I have here a document which we are entering as Stowell Exhibit No. 1, which is headed, "Minutes, Branch Expansion Committee, November 9, 1965."

"Present: Messrs. Stowell, Erickson, Olswang and Price."

I wonder if you could read the paragraph marked "Columbia Center".

MR. MOEN: You can read the entire exhibit, if you want to.

A. It looks like an authentic document. I don't remember the meeting at all.

Q. Mr. Stowell—

MR. HARTMAN: Excuse me, Let the record show I join in Mr. Moen's objection and I want a continuing objection to any of the testimony by this witness with two counsel examining.

MR. VERVEER: On what grounds?

MR. HARTMAN: On the ground only one counsel is entitled to examine.

MR. VERVEER: Under what rule?

MR. HARTMAN: I believe the local rules.

MR. VERVEER: Can you specify the rule?

MR. HARTMAN: I don't have a copy of it.

MR. TORRE: Off the record a minute.

MR. HARTMAN: You can go ahead. My objection is to all further questions.

MR. VERVEER: Perhaps Mr. Moen can help you?

MR. MOEN: Our objection is in the record and we will let the judge rule on it. I am not objecting to the deposition but to two lawyers interrogating. My objection is noted in the record.

MR. HARTMAN: My objection is in the record. You can do what you think is appropriate.

MR. TORRE: Let the record show Mr. Hartman basis his objection on Rule 28 entitled "Trial".

MR. HARTMAN: I don't want you to say what I base it on. We will have the judge decide this.

BY MR. VERVEER:

Q. (Continuing) Getting back to the Stowell Exhibit No. 1 and the paragraph specifically headed "Columbia Center"—

A. (Interposing) Yes, I read that.

Q. Does the statement in the Exhibit strike you as in any sense unusual?

MR. MOEN: My objection to the interrogation of the second lawyer is a continuing one.

MR. TORRE: All right. Shall we just cease that objection and note it for the record once and for all?

MR. MOEN: Very good.

A. I would say things like this have occurred. I wouldn't say it is usual but it has been done.

MR. HARTMAN: Could I—

MR. TORRE: Off the record, please.

(Brief pause.)

MR. VERVEER: On the record.

Would you read back Mr. Stowell's last answer, please?

(The following was read by the Court Reporter:

"A: I would say things like this have occurred. I wouldn't say it is usual but it has been done.")

BY MR. VERVEER:

Q. Mr. Stowell, could you tell me to your knowledge when and where it has been done?

A. No, I can't.

Q. Could you explain in more detail then your answer to the previous question?

A. Well, I think it is common when a new bank is started for the directors, or the suggested directors, and sponsors of the bank to borrow money to buy capital stock, to buy stock in the bank.

Usually it is at their own suggestion where they go for the money but I can visualize a bank who is trying to help a possible correspondent get started would try to find some bank interested in lending them.

Q. Mr. Stowell, are bank stock loans reported to federal regulatory agencies?

A. I can't answer that. It would be a guess.

Q. Mr. Stowell, does the National Bank of Commerce have funds to make bank stock loans to a bank the size of the Columbia Center National Bank?

A. Yes.

Q. Could I ask then why it would be desirable to obtain the help of a California Bank in financing stock purchases for a bank in Columbia Center?

A. I couldn't answer that.

Q. Mr. Stowell, do you know who the "some of our friends" referred to in this paragraph might be?

A. I don't know which ones of them requested borrowing on their stock. I was not one of them.

Q. Could I get back to the previous answer you gave me, Mr. Stowell?

You said, I believe, that you couldn't answer why it might be desirable to go to a California bank to finance this.

A. That is right.

Q. Could you conceive of any reason why that might be desirable?

MR. HARTMAN: Are you asking him to speculate or guess, or what?

MR. VERVEER: Based upon his many years of experience as a banker here in the state of Washington, and as a very high ranking executive in the National Bank of Commerce, and member of the Branch Expansion Committee which considered this question.

A. No, I wouldn't know why.

BY MR. VERVEER:

Q. Now, if we can jump back to the question about "some of our friends", you say you are not certain precisely which individuals sought that help?

A. No, I am not.

Q. Could you mention any particular group of individuals, or individuals, who might have been likely to seek that help?

A. Well, there was a number of people in the town, in the vicinity, who were buying stock. I wouldn't have any ideas which of them would want to borrow money to buy stock.

Q. Mr. Stowell, what is the date of this particular Branch Expansion Committee meeting we are discussing?

A. November 9, 1965.

Q. Mr. Stowell, are you quite confident that a group of individuals came to the National Bank of Commerce and made some request to purchase stock in connection with this paragraph?

A. Not to my knowledge. I don't remember any group coming to the bank and requesting funds to buy stock.

Q. Is it possible that no group came to the bank prior to November 9, 1965, and requested money to buy stock in this new bank in Columbia Center?

A. Anything I answer would be purely speculative. I was not aware of any people that came over and made a specific request to buy stock.

Q. A little further in the same sentence it says that the reason that it would be desirable to obtain help from an out-of-state bank in financing stock purchases is "So that we might control any bank established".

Does that strike you as unusual?

A. Would you say that again? Where is that?

May I see it?

Q. Yes, sir.

(Counsel points to Exhibit.)

MR. HARTMAN: Off the record a minute.

(Off the record.)

MR. VERVEER: On the record.

BY MR. VERVEER:

Q. (Continuing) Mr. Stowell, would you read the paragraph headed "Columbia Center", please?

A. Yes.

MR. HARTMAN: I am not sure—

MR. VERVEER: Just a minute.

MR. HARTMAN: I am not sure the document was identified.

MR. MOEN: Why don't you identify it.

MR. VERVEER: We did, Stowell Exhibit No. 1.

MR. MOEN: Well, let's identify it as minutes of the Branch Expansion Committee, November 9, 1965, at 2:00 p.m.

MR. TORRE: That has already been done.

MR. MOEN: I don't think it was read into the record.

MR. VERVEER: All right.

MR. MOEN: Now, what was the other one?

That was marked Stowell Exhibit No. 1, the minutes of the Branch Expansion Committee, November 9, 1965, at 2:00 p.m.

A (Continuing) Who signed this, by the way?

MR. HARTMAN: It has not been established.

MR. MOEN: We will get to that.

BY MR. VERVEER:

Q. I am sorry, we cannot tell you that, Mr. Stowell. Those were the documents produced for us seriatum and those were the documents I got.

A. I will read in full the Columbia Center paragraph:

> "We discussed the possibility of an office in this Tri-City location again. The suggestion was made that we attempt to obtain the help of a California bank in financing stock purchase in a new bank by some of our friends so that we might control any bank established with our blessing in the center."

Q. Now, I was asking you, Mr. Stowell—

A. (Interposing) That doesn't make sense to me, but, Okay.

Q. Mr. Stowell, perhaps you can tell me who the "we" in the phrase is.

A. That is why I wanted to know who signed this because it doesn't sound—I would like to know who would make such a statement.

MR. TORRE: Can we go off the record again?

MR. MOEN: Yes.

(Off the record.)

MR. VERVEER: On the record.

BY MR. VERVEER:

Q. Mr. Stowell, I was asking you who the "we" referred to in that phrase might be?

A. That is why I would like to know who wrote this because I don't recall ever seeing this and usually any minutes are signed by a secretary or one of the members.

Q. Mr. Stowell, I have here a document headed "Minutes, Branch Expansion Committee, Meeting, December 17, 1965."

It has been marked as Stowell Exhibit No. 2.

Giving you this document, Mr. Stowell, I ask you whose signature is at the bottom.

A. That is Andrew Price, Jr.'s signature.

Q. Was Andrew Price, Jr. the secretary of this committee during the latter part of 1965?

A. I don't know who was secretary. He signed here as chairman.

Q. Do you recall who had the rsponsibility for preparing the minutes of the Branch Expansion Committee in the latter part of 1965?

A. No.

Q. So that, Mr. Stowell, you have testified that you don't know who the "we" might be?

A. That is right.

Q. Have you any idea what the phrase "so that we might control any bank" might be?

A. I don't see how you could control it.

Q. Do you have any idea what might have been referred to by the word "control"?

A. To control you would have to have over 50 percent or 60 percent of the stock and, to me, it doesn't make sense, as I say.

Q. Who controls the Marine Bancorporation?

A. The stockholders. There is no individual has even 10 percent of the stock.

Q. Would it be fair to say that in reality the management of the bank, the Board of Directors, exercises control of the Marine Bancorporation?

MR. MOEN: Is your question the management of the bank, did you say?

BY MR. VERVEER:

Q. Well, the management of the Marine Bancorporation, including its directors, control Marine Bancorporation, in reality?

A. I believe so.

Q. How much stock as a group would the management of the Marine Bancorporation, including its directors, own?

MR. HARTMAN: What do you mean by "management"?

BY MR. VERVEER:

Q. (Continuing) What did you mean by "management", Mr. Stowell?

A. Of the Marine Bancorporation?

Q. Yes, sir.

A. I would say the Chief Executive Officers.

Q. Have you any idea approximately what percentage of the stock of Marine Bancorporation the Chief Executive Officers and the directors own?

A. It would be purely a guess and I would think it would be under 10 percent.

Q. Thank you; going a little further in this same sentence it says, "We might control any bank established with our blessing in the center."

Can you explain what that means?

A. I don't know what that means. It just doesn't click with me. It doesn't seem practical.

Q. Mr. Stowell, is this Branch Expansion Committee in the habit of considering frivolious matters?

A. No.

Q. Mr. Stowell, I now call your attention to a document which has been marked Stowell Exhibit No. 2, minutes, Branch Expansion Committee meeting, December 17, 19[illegible].

I would ask you to read, if you would, after you have had an opportunity to inspect the document, the paragraph headed "Columbia Center".

A. "Columbia Center"

"The Committee strongly favors a branch at Columbia Center and Mr. Stowell will pursue with Mr. Allison and Mr. Sherwood the manner in which the location will be established."

Q. You testified earlier, did you not, that the National Bank of Commerce could not establish a branch in Columbia Center?

A. That is my opinion.

Q. Is it your belief that the Branch Expansion Committee was fully apprised of the State of Washington law in regard to branching?

A. Apparently not.

Q. Mr. Stowell, could you read to us the members of the Branch Expansion Committee who were present at the meeting of December 17, 1965?

A. Yes. Messers. Carlson, Stowell, Buck, MacDonald, Erickson, Olswang and Price.

Q. Mr. Stowell, do these gentlemen constitute substantially all of the Chief Executive Officers of the National Bank of Commerce, or did they at that time?

A. Substantially, yes.

Q. Nevertheless, Mr. Stowell, you say that you think that these gentlemen did not understand the State of Washington law in regard to branching of banks?

A. Well, I think whenever we go to put in a branch we might select a location we like and before anything is done I think we go to counsel to see if there is any question about it legally.

Q. Mr. Stowell, just for the record, what is the Washington State Banking law with respect to branching outside the county in which the bank is headquartered?

MR. HARTMAN: I object to that question, the form of it. He is not a judge.

MR. TORRE: The objection is noted. Answer the question.

A. Well, I think we would ask our attorney with respect to that. My understanding, in talking with the attorneys is that we can not do it.

BY MR. VERVEER:

Q. Mr. Stowell, it appears to me that by this paragraph that you were delegated by the committee to handle the bank's activities in the Columbia Center area.

Is that a correct impression from this document?

A. No, I do not think it is.

Q. What then was the committee asking you or directing you to do?

A. They were asking me to talk to Mr. Allison and Mr. Sherwood. I don't recall knowing Mr. Sherwood. Maybe he had something to do with it at the time.

Mr. Allison, at that time, to the best of my knowledge, or to my recollection, was the president of the Bon Marche and Vice-President of the Allied Stores Corporation, and if I talked to them it would be with respect to the location or something like that, but not as to the legal matters.

Q. Is the statement that you "will pursue . . . the manner in which the location will be established" suggesting that the Branch Expansion Committee might feel that there were alternatives?

A. I can't remember that now.

Q. Do you have confidence in Mr. Andrew Price, Jr.'s ability to faithfully and accurately transcribe the decision of the Branch Expansion Committee?

A. I would say "yes".

Q. I would like to return for just a moment to the statement that you made about the Chief Executive Officers of the Bank might not have kept in mind the State of Washington's branching laws.

Are you prepared to state again that the Chief Executive Officers of the National Bank of Commerce did not keep in mind the State branching laws as being a rather important part of the invironment in which they operate in?

A. I am not just sure whether the laws have been changed since then. I think there have been some definite rulings since 1965 where some items in branching have been made a little clearer for a layman to understand.

Q. Are you, by that, suggesting that the State branching laws are so complex that men who were intrusted the responsibility of running a very substantial bank were unable to keep them in mind and fully understand them?

A. I don't think, so far as the laws are concerned, the management of the bank tries to keep up to date on that. I think they leave that to legal counsel.

Q. Mr. Stowell, would you say that the two minutes, or the two paragraphs selected from these two Branch Expansion Committee meetings at the end of 1965 were completely unrelated in terms of a series of events to the request later in the sixties, or the opportunity later in the sixties, afforded you to purchase stock in a new National bank in Columbia Center?

A. Were completely unrelated, did you say?

Q. Yes, sir.

A. No. I thought there might be a possibility of the bank getting in there, of the National Bank of Commerce getting in there.

Q. What, exactly, would be the relationship between the consideration of your bank's Branch Expansion Committee in 1965 and the opportunity afforded you to buy stock in a new National Bank some two or three years later?

A. That would be very hard to try to speculate on. That is a long time ago.

Q. I believe you said in an answer a moment ago that you thought there was a possibility of a bank getting into the Columbia Center.

A. Yes, I said that.

Q. What is the basis for that feeling that you had?

A. Well, not knowing all the legal ramifications of getting in, I thought there was a possibility. I don't think there is any question but what we would have liked to get in.

Q. Mr. Stowell, I believe earlier you testified that you were afforded an opportunity to buy some stock in 1968?

A. Yes.

Q. Are you certain that it wasn't at an earlier time?

A. I am certain in my own mind, yes.

MR. TORRE: Off the record a moment.

(Off the record colloquy.)

MR. VERVEER: On the record.

BY MR. VERVEER:

Q. Is there a possibility, Mr. Stowell, that you could have been afforded an opportunity to buy this stock somewhat earlier than 1968?

A. Apparently the records show November 1967. I thought it was 1968 but things were moving pretty fast about that time as far as I was concerned, because I was getting ready for retirement.

Q. Mr. Stowell, earlier you testified that so far as you were aware, the only other individual with connections to the National Bank of Commerce who was also invited to be a shareholder of the Columbia Center National Bank was Mr. Wilbur McGuire.

A. I think I said the only other officer of the bank. I believe there was a couple of directors also, as well.

Q. I see, and who were they?

A. There might have been more. The only two was Wiley Hemphill and Mr. Broughton, I believe.

Q. Mr. Stowell, do you know Mr. Broughton's first name?

A. No, I don't, but if we look at a bank statement of a few years ago, why—

(Document shown to witness.)

A. (Continuing) That is it; apparently Charles, yes.

Q. So that there were, to your knowledge, at least four men who were either officers or directors of the National Bank of Commerce who were invited to be shareholders in the new bank at Columbia Center?

A. Yes.

Q. Mr. Stowell, do you know who extended the invitation to become shareholders?

A. No, only as to myself.

Q. And that was again?

A. Andrew Price, Jr.

Q. Mr. Stowell, earlier you testified, in substance, that one of the things that led you to make an investment in the Columbia Center National Bank was the management,

or the prospective management, of that new bank; is that correct?

A. I think that was one of the things, yes, in trying to recall something that happened several years ago.

Q. You have just testified that you made that investment probably in the Autumn of 1967.

A. The records show November, yes, sir.

No, sir, I didn't make the investment. I agreed to make the investment. The actual investment, I believe, was in 1969.

Q. Thank you; who became the Chief Executive Officer of the Columbia Center National Bank?

A. Well, actually, at the time it started Mr. Horning.

Q. And when was that, sir?

A. I can't give you the exact date.

Q. Can you give me an approximate date?

A. But it was before the bank started, at least a few months before the bank started.

Q. Would it have been in 1969?

A. I would be nearly guessing, a very rough guess.

Q. If you will assume for a moment with me that Mr. Horning assumed his duties with the Columbia Center National Bank of July 1, 1969—

A. (Interposing) Is that when the Bank opened?

Q. I believe the bank opened in August, 1969, but I am not certain; but, if you are prepared to assume with me for the moment that Mr. Horning assumed his duties on July 1, 1969, how much time, roughly, elapsed between the time Mr. Horning contracted to become the Chief Executive Officer of the Columbia Center National Bank and the previous time in which you agreed to make your investment?

A. You are asking for some dates that are very hard to recall.

I do know that he was asked to do it because the other man was unable or did not go into it. I can't give you the date because I did not talk to Mr. Horning myself.

Q. You told me that the other man refused to go into the management position at the Columbia Center Bank.

Do you recall that other man's name?

A. No, I don't, but the record will show it. He was an Alaskan banker.

Q. Mr. Stowell, does the name Gene Rinaldi mean anything to you?

A. I would have to read the record to be sure.

Q. You say you did not discuss the position of the Columbia Center National Bank with Mr. Horning?

A. That is right. I don't recall ever discussing it with him until after he was elected.

Q. Did the Columbia Center National Bank have a committee to hire new management?

A. I don't know.

MR. VERVEER: I would like to mark this Stowell Exhibit 3.

(Stowell Exhibit No. 3 marked for identification.)

MR. VERVEER: This is a document headed "Credit Memoranda, Columbia Center National Bank." The date source is 10-11-68 and the notation shows it was dictated by F.A.A.

Can we go off the record?

(Colloquy off the record.)

MR. VERVEER: On the record.

MR. TORRE: Mr. Moen, will you stipulate that this document is a document taken from the files of the National Bank of Commerce and prepared in the ordinary course of business by the National Bank of Commerce?

MR. MOEN: I will stipulate that it is a page taken from a record of the National Bank of Commerce. I cannot stipulate as to whether it is in the ordinary course of business or how it got there.

MR. TORRE: You stipulate it is an authentic document prepared by someone in the National Bank of Commerce?

MR. MOEN: I can't even stipulate to that.

I can stipulate I furnished it to you as part of the records of the National Bank of Commerce.

Who prepared it, or its authenticity, or how or when or why are beyond the scope of knowledge.

BY MR. VERVEER:

Q. Mr. Stowell, have you had a chance to examine the document?

A. Yes.

Q. Do you recognize the form the document is printed on?

A. You know, I left for Europe shortly after I retired and I would like to check and see if I was ever in Seattle on that day, or not.

I went to our London branch and in Europe. I know I was in Portugal in the last of October and I am sorry, sir, I don't remember meeting this fellow at all.

Q. Let me ask first:

Do you recognize the form that this is printed on?

A. Yes.

Q. What sort of form is it?

A. This is a memo form commonly used in the bank.

Q. Do you know who F.A.A. is?

A. I think I do, yes.

Q. Who is it?

A. I think Frank A. Abersfeller.

Q. Mr. Stowell, will you please read the first two paragraphs of this memorandum?

A. "On October 7 Jene Rinaldi was here to visit with us regarding the Presidency position for the bank. Messrs. Price, Stowell, McGuire, MacDonald and Abersfeller hosted a luncheon in the Directors' Dining Room where we discussed Mr. Rinaldi's banking experience in California and the related growth and potential of the Tri-Cities area.

"On Tuesday, October 8, Messrs. McGuire and Abersfeller attended the monthly Directors meeting of the bank and introduced Mr. Rinaldi to the group. During the Board meeting the members agreed to hire Rinaldi and delegated the responsibility to negotiate with Rinaldi to the committee originally chosen to hire management. The Committee members are W. H. McGuire, Dean Loney and Advisor R. J. Stowell."

Q. Thank you; this document states then that you were a member of a committee to hire management for the Columbia Center National Bank?

A. Yes, it does.

Q. Do you dispute that statement?

A. No, I don't dispute it but I don't remember this meeting.

Q. You were, in fact, then a member of a committee designated to hire management of the Columbia Center National Bank?

A. I can only say what the memo says. I don't remember meeting this fellow or making any deal with him.

Q. I am not asking that, Mr. Stowell. I am asking you if you were, in fact, a member of the committee designated to hire the Chief Executive Officer, and the Cashier as well, of the Columbia Center National Bank?

A. I would like to ask Abersfeller and some other people. They said I was and maybe I was and I did not attend the meeting. I just don't remember this particular memo, I am frank to say.

Q. Mr. Stowell, you told us at the beginning of your testimony that you retired from the National Bank of Commerce?

A. Yes, sir, as of October 1st.

Q. What year, sir?

A. 1968.

Q. And what age were you at the time you retired, sir?

A. I retired at age 65.

Q. Is that the normal retirement age for officers?

A. Yes.

Q. And could I ask what is the policy in regard to the age of executives of the Marine Bancorporation?

A. There is no policy. The directors have compulsory retirement at age 72 but there is no retirement date for officers.

Q. Earlier in your testimony, Mr. Stowell, you told us that one of your duties involved some consideration of the acquisition of or merging with Farmers and Merchants Bank?

A. Yes, sir.

Q. Did you hold any, personally hold any discussions with the controlling shareholders of that bank?

A. Yes, sir, I did.

Q. Who were they?

A. Well, there was Emery Hall, Mr. Auge, A-u-g-e (spelling).

MR. TORRE: A-u-g-i-e (spelling).

A. (Continuing) And their attorney. The record will show his name.

BY MR. VERVEER:

Q. For the sake of a small clarification, I believe you have reference to Mr. Augie Klaue?

A. That is right.

Q. And the name of the bank's attorney was John G. Layman?

A. Right.

Q. And was he also a stockholder?

A. I am not sure. I believe he was.

Emery Hall was the man I had my principal conversation with. The other men came over just once or twice.

Q. You were saying something about Mr. Hall?

A. My principal conversations were with him. The other men came over just once or twice. I happened to know Emery Hall.

Q. How did you happen to know Emery Hall?

A. Because he had been a customer of the bank for quite a while, and, as a matter of fact, I made him a loan. The discussions regarding the loan were made with him at which time he was buying the stock in the bank.

Q. So that you assisted in the processing of the bank stock loan application with Mr. Hall?

A. That is right.

Q. The proceeds of which Mr. Hall used to purchase his interest in the Farmers and Merchants National Bank?

A. That is my knowledge.

Q. When did you have discussions with these gentlemen?

A. These dates kind of get me a little bit now but it was prior to my retirement and the loan minutes will show when the loan was presented.

Q. I have here a document headed "credit memoranda", "Farmers & Merchants Bank of Rockford."

The date source is "8-15-68" and the initials are "R.J.S."

MR. VERVEER: I would like this marked as Stowell Exhibit No. 4, a two page document.

(Stowell Exhibit No. 4 marked for identification.)

A. This is my memorandum.

BY MR. VERVEER:

Q. Mr. Stowell, would you please read the first paragraph of that?

MR. HARTMAN: Wait a minute.

MR. VERVEER: I am sorry.

(Brief pause.)

BY MR. VERVEER:

Q. Mr. Stowell, will you now read the first paragraph, please?

A. Yes.

"On 11-23-66 we made a loan to J. Emory Hall, August Klaue ('Augie') and John G. Layman in the amount of $800,000 for the purpose of purchasing stock in the above bank from the estate of the former President and owner and others at a price of $400 or less per share. Not all of this loan has been used. They reached a maximum borrowing of $596,000 and there is a present balance of $548,810."

Q. Will you read the third paragraph please?

A. Yes.

"At the time we made this loan for the purpose of control of the bank, it was understood, as well as such things can be understood when there is no formal agreement, that at about the time the loan matures we would have an opportunity to buy the bank."

Q. Mr. Stowell, do you recall in any detail the discussions you had with these three gentlemen?

A. Well, I remember visiting with them and I remember saying that we would like an opportunity to bid on the bank when they were ready to sell.

Q. On the basis of this memorandum would it be fair to say that at least some of your discussions with these three gentlemen occurred in August of 1968?

A. This, the original discussion, was on 11-23-66, apparently at the time the loan was made, and I did have another discussion with them just before I retired, a few months before I retired. I recall that.

Q. What recommendations did you make in connection with the possibility of acquiring Farmers and Merchants Bank?

A. You mean the recommendations to our people?

Q. That is right, your organization.

A. I think I told them at the time that, and this is trying to recall what I would have said at that time, that yes, we are interested in buying banks in the State where the location is satisfactory, that if the opportunity came that we make them an offer to buy the bank, and I don't remember the price but it would have been a reasonable price in line with what you ordinarily might pay for a bank such as this.

Q. Mr. Stowell, would you read the bottom paragraph of the first page of that memorandum into the record please?

A. Yes.

> "Wednesday of this week (8-14-68) Robert Buck and the writer kept an appointment with Emory Hall to have luncheon in Spokane. Accompanying Emory Hall was Augie Klaue. We had a very friendly discussion concerning our proposed acquisition of the bank. I told them I was to retire on 10-1-68 and would like to see the arrangements made for acquisition prior to that time. I rather sensed from that time on there was quite a poker game going on with their conversation concerning their desire to build the bank, establish more branches and even merge with the American Commercial Bank prior to the sale to our bank. I told them we would sooner ac-

quire the bank as it is now rather than have an organization built up that might provoke resistance from the Justice Department."

Q. Now, you said a moment ago that you had made some recommendations that involved price.

A. I believe that is right, in very general terms.

Q. Did you ever calculate an amount which you felt N.B.C. could appropriately offer for the Farmers and Merchants Bank?

A. I would think if we discussed purchasing it, yes.

Q. I would like to ask you now, Mr. Stowell, to examine the second page of this memorandum and tell me if, in fact, this is a calculation of an appropriate purchase price for Farmers and Merchants Bank?

(Brief pause.)

A. What is your question?

Q. Sir, does the second page of your memorandum involve calculations made by you as to an appropriate purchase price that could be offered by the National Bank of Commerce for this bank?

A. I think it was a price I suggested, yes.

Q. Could you explain that price in terms of the price per share of the bank and, more especially, in terms of what would be the total purchase price for the stock of the three gentlemen with controlling interest?

A. Let me see how many shares of stock did they have?

There were that many outstanding but I don't know how many shares they had. I think we were talking here of a price of $700 per share.

Q. And have you any idea what the total purchase price of the bank would then be for their stock, I am sorry.

A. Can I guess here?

Q. Yes, sir.

A. I said here that the shares cost them roughly $400 per share and we were talking about a price of $800,000, so that I am going to guess that would be about 2000 shares, would it not?

Q. You are the banker, sir.

A. Well, I haven't got a pencil and scratch pad here.

(Pencil and paper handed to witness.)

A. (Continuing) This is only a guess.

Now, we are talking about a $800,000 loan and you said they paid $400 a share. It looks like 2,000 shares and if we offered $700 a share for their part it would have been $1,400,000.

Q. Thank you; Mr. Stowell, I have here a four page—four pages of calculations which in a moment I will offer for marking as an exhibit, but let me ask you first of all if you recognize this as your handwriting?

A. I would be very pleased if I could write that good.

Q. This is not your handwriting?

A. I don't believe it is.

Q. Very well, then we will not offer this now.

What was the outcome of your discussions with the Farmers and Merchants Bank?

A. Oh, they came back with a price of around 4 or 5 million dollars and it just seemed so outrageous to us that, so far I was concerned, we closed the conversation.

Q. At what time did you close the conversation, as you have stated?

A. I think it was just about just before I retired, I believe.

Q. So that you believe it to have been in the Autumn of 1968?

A. Yes, I know we had a meeting with them just shortly before I retired. I know that.

Q. Are you aware whether there were any further discussions by officials of the National Bank of Commerce?

A. Yes, I think there was one or two further discussions.

Q. About when did those discussions take place?

A. I would think they probably would have been in 1969 or they might even have been in 1970. I am not sure of the date.

MR. TORRE: Off the record.

(Off the record Colloquy.)

MR. VERVEER: On the record.

BY MR. VERVEER:

Q. Mr. Stowell, do you know when the negotiations between the National Bank of Commerce and Washington Trust Bank began apropos of the merger?

A. No, I do not. I know it was—you know, a bank such as ours has talked to other banks, are constantly talking to other banks, in the State saying, "We would like an opportunity when you are ready to discuss the purchase if you ever decide to sell." I know that has been carried on for I don't know how many years.

When they were started with Washington Trust Bank, I really don't know.

Q. But aside from these generalized discussions among bankers in the State, you don't know when more earnest discussion began?

A. That is right. I know they were carried on to some extent before I got into the act.

Q. When, sir, did you get into the effort involving Washington Trust Bank?

A. Well, it was quite a while after I retired. I am going to guess but I wish you would not hold me to a few months. It was sometime in late 1969 or early 1970.

Q. And by that time the discussions, the more earnest discussions, had already begun prior to the time you became involved?

A. That is my recollection.

Q. So that there were some discussions that we can appropriately call earnest which occurred prior to late 1969?

A. Don't hold me to those dates.

Q. To the best of your recollection anyway?

A. Yes.

Q. So that it is entirely possible that discussions were going on simultaneously with Washington Trust Bank and Farmers and Merchants?

MR. HARTMAN: I will object to the question so far as a possibility. Everything is possible. It is vague.

MR. VERVEER: I will rephrase the question.

BY MR. VERVEER:

Q. (Continuing) In light of the testimony that you have just given about discussions with Farmers and Merchants Bank following your retirement, and also in line with the testimony you have just given on the serious discussions between the Washington Trust Bank and the National Bank of Commerce which preceded your involvement in that merger proposal?

A. Is it possible. I really don't know.

Q. Would the Farmers and Merchants Bank be an adequate entry vehicle into the Spokane market?

A. Oh, no, in no way.

Q. You seem very emphatic about that. Why not?

A. I think we look at that the same as we look at the Bothell State Bank or any other people we had discussions with.

Q. Could you elucidate?

A. It is a little bank. It is not in the Spokane territory, not in Spokane, I don't think any bank would use that as a vehicle to get into Spokane.

Q. You have given me, I think, two reasons. One is that it is a little bank and the other is that it is not in the City of Spokane; is that correct?

A. That is my reason, yes.

Q. Are there any other reasons that you could provide?

A. I think one of the things that a bank looks at in making acquisitions is management and I feel very sure that we would not be interested in the management that the Farmers and Merchants Bank had to be in the Spokane territory.

Q. So that to that you would add management, is that right?

The size of the bank, and the fact that it is not in the City of Spokane, and you will say "management" also?

A. Yes.

Q. Would you say that the National Bank of Commerce does not have adequate managerial resources to staff a bank like Farmers and Merchants?

A. I wouldn't say that. I think they could work it out over a period of time, yes.

Q. So that the management problem would appear not to be too substantial?

A. Well, it is something that is quite a bit deeper than that. I think you have to consider the reputation of the management, whether it is adequate or not, what they have built up during a long period of time.

I think we considered their operation at Rockford in the farm territory probably reasonable.

Q. Why would a small bank be an inadequate entry vehicle into the Spokane market?

A. I think I might give you an example.

What has been the result of the biggest bank of the state going into Tacoma, or the third biggest bank in the state going into Spokane with a small operation?

Neither of them have done very much if you look at the bank statements.

Seattle-First bought a small bank in Tacoma and the growth has not been very much; and the Pacific National Bank of Washington, it was then the National Bank of Washington, bought a small bank in Spokane and if you look at their totals they haven't grown very much.

Q. Do you find these situations analagous to the situation of the National Bank of Commerce if it moved into a market with a small bank, it would not be able to grow either?

A. I would not say it would not be able to grow, but it would be a long, slow process.

Q. The final point I think you made was—the final point that you made was that the Farmers and Merchants bank was not in the City of Spokane; is that correct?

A. That is correct.

Q. What is the difficulty there insofar as the National Bank of Commerce's entry into the Spokane banking market is concerned?

A. I don't believe I follow your question.

MR. HARTMAN: I think we ought to have a definition of what you mean by Spokane banking, first.

MR. VERVEER: For the purpose of this deposition we will accept the definition which appears in the bank's application to the Comptroller of the Currency.

MR. HARTMAN: Let's see if he knows what that is.

BY MR. VERVEER:

Q. Are you familiar with that, Mr. Stowell?
A. No.
MR. TORRE: Off the record.

(Off the record colloquy.)

MR. VERVEER: On the record.

BY MR. VERVEER:

Q. Mr. Stowell, do you understand the Spokane banking market as being the Spokane metropolitan area; that is, the City of Spokane and the populous area around the City of Spokane, anything that could fairly be called the suburbs?

A. I think you need an economist to answer that question.

I was trying to visualize the picture in Seattle where the suburban branches, such as Bellevue, are really not a part of the Seattle Banking Market.

I would think you would want to be in downtown Spokane if you were going to make an effective showing in Spokane, just the same as I think you would be in downtown Seattle and not Bellevue or Renton or someplace such as that.

That would be my personal feeling on it.

Q. And, so, in terms of location, being in the downtown commercial section is really the ideal location from the standpoint of the bank?

A. Yes, that would be my opinion.

Q. Getting back for the moment to the question of the size of the bank to be acquired, you pointed out that to your knowledge certain of the other major banks in the State of Washington have entered other large markets and have had only limited success, in terms of—

A. (Interposing) They grow slowly.

Q. They are capable of growth?

A. Yes.

Q. And the National Bank of Commerce would be capable of growing?

A. Yes.

Q. There is no doubt in your mind about that, is there?

A. No, there isn't.

Q. If the National Bank of Commerce so chose, it could inject substantial resources into any banking market in which it was located?

A. Yes.

MR. TORRE: That is all.

MR. MOEN: No questions. I will reserve questioning. I have no questions.

MR. HARTMAN: I have no questions.

MR. TORRE: We will not waive signature.

MR. MOEN: And we will not waive signature.

(Deposition concluded at 11:32 o'clock, a.m., August 16, 1972.)

STOWELL DEPOSITION EXHIBIT 1
IS REPRODUCED AS GX K-2 ON PAGE 1432.

STOWELL DEPOSITION EXHIBIT 2
IS REPRODUCED AS GX K-3 ON PAGE 1433.

STOWELL DEPOSITION EXHIBIT 3
IS REPRODUCED AS GX J-17 ON PAGE 1393.

STOWELL DEPOSITION EXHIBIT 4
IS REPRODUCED AS GX G-9 ON PAGE 1284.

DEPOSITION OF FRANK A. ABERSFELLER
TAKEN AUGUST 17, 1972

* * * *

DIRECT EXAMINATION

BY MR. VERVEER:

Q. Please state your full name and your address.

A. My name is Frank A. Abersfeller; my address is 1217 Hemlock Street, Kent, Washington.

Q. Where are you employed, Mr. Abersfeller?

A. I am employed at the National Bank of Commerce.

Q. In what capacity?

A. I am the Correspondent Bank Officer.

Q. And do you have a title with the bank?

A. Assistant Vice-President.

Q. And you are in charge of correspondent services with the bank at an operational level?

A. Yes, that is right.

Q. To whom do you report?

A. I report to Mr. Robert Cummings, who is in charge of the business development and public affairs administration of our bank.

Q. Could you give us a short account of your duties?

A. Yes. I service correspondent banks. My job is to provide services for correspondent banks in just about any area of services our bank, as a large correspondent relationship, can provide a unit bank or another correspondent.

That goes into supplies, possibly, and equipment. I am the contact man and the correspondent banker is the one that calls me to find who to talk to or if there is equipment available, or, "can you supply me a certain form". That sort of thing. It is strictly a service type responsibility that I have.

Q. Do you have any sales-type responsibility when it comes to correspondent banking business for the National Bank of Commerce?

A. Sales?

Q. Do you contact prospective customers of the National Bank of Commerce?

A. Yes.

Q. For correspondent services?

A. Yes, and offer our services as a correspondent.

Q. How many correspondent accounts has the National Bank of Commerce?

A. About 160 that fall in my category.

There are two categories of correspondent banks. One is what we call a "due to" and "due from".

Are you familiar with those terms?

Q. Yes.

A. And my responsibility is the "due to", those banks that have accounts with us.

Q. For the record, will you explain the difference between a due to and a due from?

A. Well, a due to account is one that a bank has an account with us. And a due from is an account that we have with another bank, that the National Bank of Commerce has with Chase, or the Bank of America, or like that.

Q. And the side of the correspondent business which you deal with has to do with the sale of services by the National Bank of Commerce to other banks, is that correct?

A. That is right.

Q. You said a moment ago that the National Bank of Commerce had 160 such accounts?

A. Roughly. I am not positive. That is not the exact number, I don't know the exact number. I just don't know how many exactly.

Q. In terms of the geographic breakdown of these accounts, about how many of them would be in the State of Washington?

A. Around 120, I believe.

Q. And about how many of those accounts would be located on the Eastern side of the Cascade Mountains in the State of Washington?

A. I would be guessing if I were to say. I just don't know.

Q. Approximately.

A. Well, maybe 25.

Q. 25?

A. I would like to restate that 120. I don't think we have 120 in the State. I am thinking now of the list and that includes some reciprocal accounts and some due forms also in this list that I get, so that I don't know whether it would be 100. Maybe there might be 80 in the State.

Q. What is a reciprocal account?

A. An account in two places.

For instance, a bank has an account with us and we have an account with that same bank.

Q. What would be the purpose of a reciprocal account?

A. To exchange cash letters. A clearing account, primarily.

Q. Primarily?

A. Yes.

Q. Does your bank offer correspondent services to banks in Idaho?

A. Yes, we do.

Q. Do you have many correspondent accounts in Idaho?

A. We have three accounts in Idaho, the Bank of Idaho, First Security, and the Idaho First National.

Q. Have you any correspondent accounts in Montana?

A. Yes, we have.

Q. Are these country bank type of accounts?

A. (Witness nodded in the affirmative)

Q. These are?

A. Yes, they are.

Q. How many such accounts do you have?

A. About 20.

Q. Is there the correspondent banking business very competitive?

A. Yes, it is.

Q. Who are your major competitors for correspondent business?

A. Well, the Seattle First National Bank and the Pacific National Bank of Washington.

Q. Is there a Spokane market for correspondent services as compared with the Seattle market for correspondent services?

A. I would say more in the Seattle, probably because of population, I would think, and more people and more activity and more services might be needed for businessmen.

Q. Let me rephrase that to ask if banks, particularly country banks in Eastern Washington and Idaho and in Montana find it desirable, or necessary, to maintain a correspondent in Spokane?

MR. HARTMAN: Excuse me, can you define what you mean by a country bank? I don't know what a country bank is. One in Walla Walla for example?

Is that a country bank?

BY MR. VERVEER:

Q. (Continuing) Mr. Abersfeller, as a professional banker, what do you understand the distinction between a country bank and a major metropolitan bank?

A. Well, one located in the country, as it were, one in a smaller community and not really used to metropolitan ways of doing business, I guess; but, a country bank is on that is not a metropolitan bank.

Q. Mr. Abersfeller, would you set some figure in terms of deposit size to distinguish a country bank from a major bank?

A. In my mind I can't do that because, thinking back to some of the city banks I know are of small nature or size, like, well, I don't know, the Ballard Bank of Washington, for example, just starting. They would be a metropolitan bank, but they are small, so that I don't know that I can say by size.

Q. Would you call the Baker Boyer bank a country bank?

A. No, I don't think I would. A country bank, to my mind, would be one that probably leans on a correspondent more than they might.

They have trust services. They take care of pretty much the complete gambit of lending activities.

I would not really call them a country bank even though they may be in the country.

Q. Would a distinction,—when we are speaking about correspondent services—small, medium and large size banks be more helpful in terms of deposits?

MR. HARTMAN: Yes, if we know what they are.

MR. TORRE: May we stipulate for the record, for the sake of counsel, that small, medium and large will be in the answers given to intervenor in answers to interrogatories?

MR. HARTMAN: You have a new class, in there, I think.

MR. TORRE: Small, medium and large.

MR. HARTMAN: I don't remember any medium.

MR. VERVEER: Can we go off the record, please.

(Off the record colloquy.)

MR. VERVEER: Back on the record.

Will you read the last question?

(Preceding question read by the reporter.)

MR. VERVEER: For the sake of this question we will stipulate that a small bank is one that has deposits of less than $30,000,000, and a medium size bank is one which has deposits of between 30 and 100 million dollars, and a large bank is one with deposits above 100 million dollars.

BY MR. VERVEER:

Q. (Continuing) Now, to repeat the question:

Is that a helpful distinction when we speak in terms of sales or purchases of correspondent services?

A. No, because we sell or offer our services to any size bank.

Q. Could you tell me in what category of small, medium and large the majority of the customers of the National Bank of Commerce fall?

A. Correspondent bank customers?

Q. Yes.

A. In my area of responsibility they would be in the small to medium.

MR. HARTMAN: Is that question in the terms of numbers of customers or deposits?

BY MR. TORRE:

Q. How did you answer?

A. By numbers.

BY MR. VERVEER:

Q. You told us a few minutes ago that your bank has correspondent accounts in Eastern Washington and Idaho and in Montana.

Would the size distribution of the banks east of the Cascade Mountains be the same as you have just specified; that is, the majority of them would be in the small and medium size category?

A. Yes.

MR. HARTMAN: Limiting that to those states, is that the question; Washington, east of the Cascades, Idaho, and Montana?

MR. VERVEER: Yes.

BY MR. VERVEER:

Q. Now, if we can go back for a moment, would small and medium sized banks located in Eastern Washington, East of the Cascades, and Idaho and Montana find it desirable to maintain a correspondent located in Spokane?

A. Well, I really don't know. I would think that that would be up to the individual bank, depending on services available and so on.

Q. Do you believe there is any advantage from a standpoint of clearing checks to having a correspondent in Spokane for banks in Washington east of the Cascades, Idaho and Montana?

A. Not necessarily. The way transportation is today, and I understand that the Federal Reserve is going to promote Satellite collection agencies of their own as time goes on, I think that most of the business in Montana is directed to the Fed. anyway so that I really can't answer. I don't know. I have never really investigated that.

Q. Mr. Abersfeller, can you tell me what the float time would be for a bank located in Eastern Washington clearing through a Seattle Correspondent?

A. Are you talking about bank to bank directly?

Q. Yes.

A. Float time, one day.

Q. What about a bank in Idaho?

A. Well, some things depend on the availability because of scheduling of deliveries—mail, for example. Everything else being equal, in other words, plane connections and things like that, it could be one day also, or it could be two days. It just depends. Sometimes we get a letter in one day and sometimes it is two days. We really can't say. It varies.

Q. Distance would not be a factor, is that what you are saying?

A. Yes, distance is a factor but you are talking about Idaho now. If you are talking about California or Way points, then it could be up to two days.

Q. Is the National Bank of Commerce a member of the Spokane Clearing Association?

A. Not to my knowledge.

Q. Do you feel that the National Bank of Commerce's efficiency in handling correspondent accounts in Eastern Washington, Idaho and Montana would be improved if it were?

A. No, because we have our clearing system here in Seattle. In other words, the banks in Idaho and Montana would send directly to Seattle to clear.

Q. If you had an operating entity in Spokane, would you joint the Spokane Clearing Association?

A. I am sure we would. We belong to the Seattle Association.

Q. Do you see any possibility of increasing the correspondent business in Eastern Washington, Idaho and Montana?

A. Eastern Washington—Eastern Washington, Idaho and Montana?

Yes, I do.

Q. Would that possibility be enhanced by the locating of a National Bank of Commerce branches in Spokane?

A. Not necessarily. I was speaking primarily of Idaho and Montana because these smaller banks that we are speaking about, as time goes on, are developing a Western trend of business rather than the East.

You see, they are in the Ninth District out of Minneapolis and most of that Fed. business travels East, but

as time goes on and more people are moving about the more Coast items are appearing, cash letters, namely to Seattle and other coast towns like San Francisco, Portland and Los Angeles would be a direct send.

Q. If I understand what you have been telling me, the location of the National Bank of Commerce branches in Spokane would not have any noticeable effect upon your ability to sell correspondent services in the area East of the Cascade Mountains?

A. Are you saying branches or—

Q. (Interposing) Branches, some sort of operation outside of a regional headquarters, commercial banking offices in the City of Spokane.

A. It probably would. I would think if I were a Montana banker that I might be influenced with a Spokane bank.

MR. HARTMAN: Did you say "offices" in Spokane, plural?

THE WITNESS: I believe you said that first and then you restated, did you not, and said regional area or regional office?

BY MR. VERVEER:

Q. From your perspective as a person responsible for servicing and to some extent selling correspondent services, would it make any difference if you had one office in the City of Spokane or multiple offices?

A. No.

MR. HARTMAN: What was your answer?

THE WITNESS: No, because the function is out of the administrative area and not the branch.

BY MR. VERVEER:

Q. What part did you play in assisting—

MR. VERVEER: Strike that last question, please.

(Brief pause.)

BY MR. VERVEER:

Q. Mr. Abersfeller, I have a document here headed "Information Memoranda", "Washington Trust Bank". The date is 4-12-71, and the initials of the dictator are F.A.A.

Could I ask if you recognize the document?

A. Yes.
Q. Did you, in fact, dictate that memorandum?
A. Yes, I did.
Q. Does this appear to you to be an accurate reflection of what you dictated?
A. Yes.
MR. VERVEER: I would like this marked as Abersfeller Exhibit No. 1, please.

(Abersfeller Exhibit No. 1 marked for identification.)

BY MR. VERVEER:

Q. Are the statements contained in this memorandum true?
A. Yes.
Q. Did you write the memorandum in the normal course of your business?
A. Yes.
Q. What part did you play in aiding the organization and chartering of the Columbia National Bank?
A. The organization and chartering?
Q. Chartering.
A. As we pointed out in earlier discussion, I am the service representative. In other words, I recall coming in after all those things were said and done.
I am trying to think back. I don't recall of getting involved in that part of it at all.
Q. Were you involved after the preliminary charter approval?
A. Yes, I was.
Q. After the preliminary charter.
A. I would have to have a date.
MR. MOEN: Just a minute. Was there more than one charter?
MR. VERVEER: There was preliminary approval.
A. (Continuing) There was preliminary approval. As I recall, I came into the Columbia Center picture in the fall of 1968 and I just don't know.
Q. What was your role?
A. Well, as mentioned earlier, the servicing end, liason man, or officer, from our bank to a correspondent,

the Columbia Center bank, and we provided services of a correspondent bank to the Columbia Center National Bank.

Q. What particular services did you extend to the Columbia Center National Bank prior to the time it actually commenced operations?

A. Well, I was involved in the hiring of the office of the President of the bank, and also I was the liason officer between the equipment people and our forms people.

These are all normal courses of business for a correspondent bank officer. We have done this before for other banks. It is not unusual for us to do this.

Q. What other banks have you assisted in similar manner?

A. Well, unfortunately, the banks that really didn't get off the ground.

I visited with organizers and that type of people, but, so far as the assisting with the hiring, never got that far. Before my time, before becoming correspondent assistant with the bank, we assisted the South Sound National Bank in Lacey, maybe like ten or fifteen years ago. I recall that information.

I have talked with organizers in East Wenatchee, Washington, in Raymond, Washington, as part of the correspondent bank function.

Q. How did you assist in finding a Chief Executive Officer for the Columbia Center National Bank?

A. Well, we went to the Headhunters, I guess you call them, people that specialize in finding executives for banks. I don't remember the names now, one in Los Angeles, and we wrote to the Wall Street Journal, and placed an ad, and some other publications. I have forgotten who all they were.

Q. Who absorbed the cost for this talent search?

A. I can't answer. I don't know. I just don't remember. I don't remember what happened.

Q. Would it surprise you if the National Bank of Commerce absorbed the cost of finding management for the Columbia Center National Bank?

A. If they did?

Q. Yes.

A. I would like that a little more specific. By finding management are you referring to the placement of the ads, in that regard or beyond that, or questioning of people here?

I don't quite understand.

Q. In terms of discussing the costs, let's for a moment consider any out-of-pocket sort of expenses, that is, payments for services rendered to other parties?

A. I just don't know. I don't recall of having any conversations with anyone about that. That would be beyond my realm of activities so far as payment of bills. I don't recall.

Q. You don't recall who paid the personnel agencies in Los Angeles?

A. I don't know if there was any payment made. I don't remember.

MR. TORRE: Can we go off the record a minute?

(Off the record colloquy.)

MR. VERVEER: Back on the record.

BY MR. VERVEER:

Q. Do you know who interviewed the candidates for the position of Chief Executive Officer of the Columbia Center National Bank?

A. Yes, Mr. Buck and Mr. McGuire, Mr. Loney, and other directors, I believe, of the Columbia Center bank.

Q. Could you identify Mr. Buck, please?

A. Mr. Buck is Senior Vice-President of the National Bank of Commerce.

Q. Who is Mr. McGuire?

A. Mr. McGuire is—I don't know if he was working—he was a Vice-President of our bank, but I believe he was retired at that time.

Q. And Mr. Loney?

A. Mr. Loney is Chairman of the Board of the Columbia Center National Bank.

Q. Have you assisted other correspondent banks in searching for management?

A. Yes, I have.

Q. In that regard, has a Senior Officer of the National Bank of Commerce interviewed candidates for managerial positions of correspondent banks?

A. Not to my knowledge.

Q. Is this in any sense an unusual correspondent function?

A. Restate?

Q. Aiding is the search for Chief Executive Officers, is this in any sense an unusual correspondent function?

A. An unusual?

Q. Yes.

A. Not to my knowledge, it is not. Often times a unit bank will rely, or ask a correspondent bank to provide—not to provide but, I get called often about not only maintenance types but looking for an operations officer, or a loan officer.

Q. But you just testified that actually interviewing these people would be unusual?

A. For me to interview them?

Q. For Mr. Buck or someone in his position.

A. Yes, it would.

May I add, please?

Q. Yes.

A. Unless Mr. Buck was involved, or any other officer of our bank. It may be that a correspondent banker asked that they sit down together and that is not unusual.

Q. Do you know why Mr. Buck interviewed the applicants for the job at the Columbia Center National Bank?

A. Well, only that there was, as I recall, there was information that the Comptrollers Office asked that we look—not look, but to assist in the choosing of management.

They wanted approval, as I recall, of management for the bank and they asked that we assist.

Q. I am afraid I don't entirely understand your answer.

You said that the Comptroller of the Currency requested that the National Bank of Commerce to assist

in finding a manager for the Columbia Center National Bank?

A. I don't remember exactly how that was stated but—

Can we go off the record?

Q. No.

MR. TORRE: Will you read that last question back where Mr. Verveer said, "I am afraid I don't understand the answer"?

(Whereupon, the following was read by the Reporter:

"Q: Do you know why Mr. Buck interviewed the applicants for the job at the Columbia Center National Bank?

A: Well, only that there was, as I recall, there was information that the Comptrollers Office asked that we look—not look, but to assist in the choosing of management.

They wanted approval, as I recall, of management for the bank and they asked that we assist.")

BY MR. VERVEER:

Q. You have just heard the answer to that question. I ask: Is that generally correct?

A. Yes.

Q. You spoke in terms of an approval of management of the Columbia Center National Bank.

Whose approval do you have reference to?

A. The Comptrollers.

BY MR. TORRE:

Q. This is the Comptroller of the Currency?

A. The Comptroller of the Currency, right.

BY MR. VERVEER:

Q. To go over this one more time, Mr. Abersfeller, the Office of the Comptroller of the Currency requested the National Bank of Commerce to assist in locating the Chief Executive Officer for the new Columbia Center National Bank, is that correct?

A. As far as I know, that is correct.

Q. And that the office of the Comptroller of the Currency made this request of the National Bank of Commerce in the context of the imparting of the Comptroller's approval on the manager of the Columbia Center National Bank?

A. Could you rephrase that, please?

MR. HARTMAN: I would like to hear it again.

MR. VERVEER: Would you read the question?

(Preceeding question read by the Reporter.)

A. (Continuing) To make sure I understand your question:

You are saying that on approval of the manager, or the president of the bank, that he would hand the charter—do I understand that correctly?

BY MR. VERVEER:

Q. Let me rephrase the question.

Is it correct to say that the Office of the Comptroller of the Currency informed the National Bank of Commerce that it would be required to approve the management of the Columbia Center National Bank, and that in this connection it wanted the National Bank of Commerce to assist in locating suitable management for the Columbia Center National Bank?

MR. HARTMAN: You have got two questions.

MR. MOEN: If the witness understands the question, I have no objection to his trying to answer. Frankly, I don't understand it.

A. Let's see now, the Comptroller, if I understand, to rephrase now to make sure I understand what you are saying, the Comptroller said, "Well, if you, among other things, provide management, or whatever, then we will issue the charter to acceptable management"; that is what you are saying?

BY MR. VERVEER:

Q. Mr. Abersfeller, rather than pursuing this, let me ask you again if you would describe in detail, as best you can, the circumstances surrounding the National

Bank of Commerce's assistance to the Columbia Center National Bank in finding its Chief Executive Officer?

A. Well, the ads were placed, as we discussed earlier, in the trade papers, and interviews were held with the applicants, and after that, I don't know, I have no knowledge after that. The name was submitted.

Q. And what did the Comptroller of the Currency have to do with this?

A. Well, I don't know. I would think that he would want to have proper management in that bank and look to a major correspondent for assistance and let them be of assistance to the correspondent bank.

Q. But just a few moments ago, Mr. Abersfeller, didn't you say that the National Bank of Commerce undertook this management search, at least in part, at the behest of the Comptroller of the Currency?

A. Yes.

Q. Are you aware of any prior instances, or any other instances, in which the Office of the Comptroller of the Currency has requested the National Bank of Commerce to assist in finding management for any other bank?

A. I am not aware of any.

Q. Mr. Abersfeller, is it your understanding that but for the National Bank of Commerce's assistance in staffing the Columbia Center National Bank the Comptroller of the Currency would not have granted the charter?

MR. HARTMAN: I don't believe he is competent to answer that question.

MR. MOEN: I don't believe he is competent to answer any of these questions.

MR. VERVEER: I asked him if that was his understanding.

A. Could I have that restated? Not restated, but rephrased?

BY MR. TORRE:

Q. The question, Mr. Abersfeller, is:

Is it your understanding that but for the agreement of N.B.C. to staff, or seek management for, the Colum-

bia Center National Bank that the Comptroller of the Currency would not have granted a charter to that bank?

MR. HARTMAN: I object to it, the second Plaintiff's attorney asking the question.

MR. MOEN: We have that objection in the record carrying through to all these depositions.

BY MR. VERVEER:

Q. (Continuing) You may answer.

A. I don't know. I mean, I don't think I really understand your question.

Q. Didn't you testify a moment ago that the Comptroller of the Currency requested the National Bank of Commerce to assist in finding management for the Columbia Center National Bank?

A. Yes, I did.

Q. That is true?

A. Yes.

Q. Would he have granted a charter to the Columbia Center National Bank, in your opinion, if the National Bank of Commerce did not assist in staffing the Columbia Center National Bank?

MR. MOEN: How can this witness possibly answer that question? He doesn't know what he would have done.

MR. TORRE: Let the witness answer, counsel.

A. I don't know. I just don't know.

BY MR. TORRE:

Q. Do you know Mr. John Horning?

A. Yes, I do.

Q. Who is John Horning?

A. John Horning is the President of the Columbia Center National Bank.

Q. What was his position prior to being the President of the Columbia Center National Bank?

A. He was a branch manager of the National Bank of Commerce in Camas, Washington.

Q. How do you become President of the National Bank—

MR. TORRE: Strike that.

BY MR. TORRE:

Q. (Continuing) How did he become president of the Columbia Center bank?

A. He was interviewed by the people of the Columbia Center National Bank.

Q. Was he interviewed by any National Bank of Commerce officers or directors?

A. I don't remember that he was.

BY MR. VERVEER:

Q. Who approached Mr. Horning to tell him of the opportunity at the Columbia Center National Bank?

A. I did.

Q. What prompted your discussion with Mr. Horning?

A. Well, Mr. Horning and I worked together for about six years and I was very familiar with Mr. Horning's capabilities as a banker and in my opinion he would make a good president, and, so, I am the one that contacted him.

Q. Did you have any mixed feelings about loosing a man of Mr. Horning's capabilities from the services of the National Bank of Commerce?

A. No, I did not.

Q. Why is that?

A. Well, because we have people that I felt in our bank could fill the bill in Camas.

Q. Are you familiar with the construction of the builidng that the Columbia Center National Bank occupies?

A. Yes.

Q. Do you recall the cost to construct that building?

A. It was sizable. I would be guessing. I don't remember those numbers. I had access to them but I don't remember what they were.

Q. Did you assist them in the planning and constructing, contracting for the construction of the building?

A. No, not that part. I was in on some discussions with our building and planning people, and the architects and like that, but there were no decisions that I made in that building program.

Q. Was there any effort on the part of the National Bank of Commerce to subsidize the Columbia Center National Bank?

A. In what way now, subsidized in operating?

I don't understand.

Q. Specifically, was there any effort to permit the Columbia Center National Bank to occupy a building at some cost less than, perhaps, the cost to the National Bank of Commerce and the Marine Bancorporation and its subsiduaries.

A. I don't remember about that. I really don't know anything about the Marine Bancorporation because that is another part.

Q. Mr. Abersfeller, I would like to show you a document headed "credit memoranda, Columbia Center National Bank", and the date shows at the top left, "1-7-69", with the dictator's initials of R.F.B.

Please examine the document and you will notice at the bottom of the page there is an entry dated 1-9-69 with the dictator's initials of "F.A.A.".

MR. TORRE: Off the record.

(Off the record colloquy.)

MR. VERVEER: On the record.

(Abersfeller Exhibit No. 2 marked for identification.)

BY MR. VERVEER:

Q. (Continuing) Mr. Abersfeller, you have had an opportunity to examine the document. Do you recognize it?

A. Yes, I do.

Q. Did you dictate the memorandum?

A. Yes, I did.

Q. Are the facts stated in that memorandum true?

MR. HARTMAN: The whole memorandum now?

MR. VERVEER: Just the entry marked 1-9-69.

A. To my knowledge, they are true.

BY MR. VERVEER:

Q. Did you prepare this memorandum in the normal course of your employment at the National Bank of Commerce?

A. Yes.

Q. To what does this memorandum relate?

MR. MOEN: Well, it speaks for itself.

MR. VERVEER: Is there any objection to having Mr. Abersfeller tell us to what it relates?

MR. MOEN: Why don't you let him read it into the record, if you want.

A. This is a memorandum dated 1-9-69.

> "Today I discussed the meeting with Mr. Leaf, with Andrew Price, Jr. and R. F. Buck. It was determined that King County Building Company would accept lease payment on the building as originally scheduled, that is, based upon a cost of $180,000 rather than $230,000. Further, that King County Building would purchase the equipment for Columbia Center National Bank and lease back to the bank on very favorable terms."

BY MR. VERVEER:

Q. For the record, will you identify who Mr. Leaf is?

A. Mr. Leaf is the Regional Administrator for the Comptroller of the Currency.

Q. And who is Mr. Andrew Price, Jr.?

A. Andrew Price, Jr., is the Chairman of the Board, National Bank of Commerce.

Q. And who is Mr. R. F. Buck?

A. R.F. Buck is Senior Vice-President, National Bank of Commerce.

Q. Did these gentlemen hold those positions on January 9, 1969?

A. Yes, Mr. Leaf—yes.

Q. Referring to the first and second sentences of the memorandum, do you understand those two sentences to be related in the sense that the second sentence describes your discussion with Mr. Leaf?

A. Yes.

Q. So that you did discuss with Mr. Leaf the rental arrangements between the King County Building Company and the Columbia Center National Bank?

A. I don't recall that discussion. From this memo, I would state that it ties in, as you suggest, the first two sentences, but I just don't remember talking to Mr. Leaf about the lease.

Q. This document appears to me to relate that the King County Building Association—King County Building Company leased a building to the Columbia Center National Bank based on a price factor $50,000 below the King County Building Company's actual cost; is that correct?

A. As I mentioned earlier, I don't recall the actual cost of that building.

Was it in fact 230? I don't remember that.

Q. Mr. Abersfeller, you have testified that you, in fact, wrote this memorandum.

A. Right.

Q. And you also testified that the facts related in this memorandum are accurate?

A. They were accurate at that time but I didn't know the final numbers. I don't know if this 230,000 final number was correct.

Q. To expedite matters, let us assume that the final figure was at least $230,000 and possibly more.

A. All right.

Q. Is it unusual for the King County Building Company to lease buildings, or other property, to organizations not related to the Marine Bancorporation at favorable rates?

A. I don't have that knowledge.

Q. What would prompt the King County Building Company to do something like this?

A. I can't answer that for you either. I am not familiar with the King County Building Company.

Q. It says in the second sentence of this memorandum:

> "It was determined that King County Building Company would accept lease payment—" and so forth.

Who made that determination?

A. The King County Building. You are talking about individuals now?

Q. Yes, what individuals?

A. I just don't know. I would think probably the officers of the King County Building.

Q. Who was the president of the King County Building Company in January, 1969?

A. I don't know.

Q. Who is the president of the successor of the King County Building Company today?

A. Restate, please.

Q. Who is the president of the King County Building Company, or its corporate successor, today?

A. I don't know who is the president. I don't know who the president is.

MR. TORRE: Off the record.

(Colloquy off the record.)

MR. VERVEER: Back on the record.

BY MR. VERVEER:

Q. Mr. Abersfeller, who told you about this determination that the King County Building Company would accept a rent based on a cost of $180,000 rather than $230,000?

A. I don't remember who told me that, the officer of the King County Building, probably, but I don't remember.

Q. Did you find it unusual that any corporation was prepared to offer a lease on property at $50,000 less than cost?

A. Well, I have never really had the opportunity to question other corporations. In my realm of responsibility I just don't have that experience.

Q. Would you call this a subsidy?

A. Well, I am afraid I would have to know more facts about these two number differences before I would call it a subsidy.

BY MR. TORRE:

Q. Mr. Abersfeller, you did say the statements in there are true, did you not?

A. Yes.

Q. Therefore, it is true that the King County Building Association leased a building at a loss, is that true, of at least $50,000 if not more; is that true or untrue?

A. It is true based on this comment.

BY MR. VERVEER:

Q. Mr. Abersfeller, are you telling us that you haven't any idea why Mr. Andrew Price, Mr. R.F. Buck, and yourself sat down and discussed this lease?

A. No, I am not saying that. I am saying I don't recall the discussion and I don't recall having a discussion about it. I am sorry, I just don't remember that.

Q. Do you know why this subject would come up for discussion?

A. I would say probably because of an income generating factor by the Columbia Center National Bank.

Maybe they needed assistance in the beginning to make the lease payments.

Q. Mr. Abersfeller, how long have you been active in offering correspondent bank services?

A. Six years.

Q. Do you feel that you are generally familiar with the business of offering correspondent bank services?

A. Yes.

Q. Considering banks of the size and general stature of the National Bank of Commerce, is it the practice of such banks to offer subsidies, or to be considerate of the income factors of correspondent banks to this extent?

A. Not to my knowledge of banks; not to my knowledge.

Q. So that this is somewhat unusual?

A. This is not a bank function now. We are talking about the King County Building Company, not the National Bank of Commerce.

I represent the National Bank of Commerce in the services I tender to correspondent banks.

Q. You are unfamiliar with the relationship of the bank holding companies and their subsidiaries to the banking business?

A. Not totally unfamiliar. I am not that familiar with it either.

Q. In offering correspondent services to banks, do banks that are subsidiaries to holding companies sometimes utilize the services of other subsidiaries?

A. Could you repeat that, please?

MR. VERVEER: Will you read the question?

(Preceeding question read by the reporter.)

A. (Continuing) I don't know.

BY MR. VERVEER:

Q. Has the National Bank of Commerce in offering correspondent services ever utilized the services of other subsidiaries of the Marine Bancorporation?

A. Yes. The Coast Mortgage is a subsidiary and it could be in the realm of things that a correspondent bank could be involved in, could become involved in a real estate proposition that would be acceptable to Coast Mortgage.

Q. As a contact man for the National Bank of Commerce's correspondent accounts, would you be in the position to employ the services of other subsidiaries of the Marine Bancorporation to assist correspondents with their needs; is that correct?

A. This word, "employ", I would be the contact man and I would mention the services of the subsidiary and let the people talk between themselves.

BY MR. TORRE:

Q. Would you contact the subsidiary and let them know you gave a contact?

A. Yes.

Q. You would not just point somebody in that direction?

A. No.

Q. And let them go on their own, but you would let them know?

A. Yes.

Q. So that there is sort of a cross-fertilization of services between the banks and their subsidiaries—well, between the National Bank of Commerce and its subsidiaries, the Marine Bancorporation subsidiaries, is that correct?

A. Yes.

Q. Therefore, in the normal course of your duties as a correspondent officer in referring people to subsidiaries, you would come in contact with officers of other subsidiaries and there would be kind of a grey area between you where you would have knowledge of common fields of interest, is that correct?

A. That is correct, and then I would, as I mentioned, leave the discussion between the correspondent bank and the subsidiary to themselves.

Q. Isn't it also correct then that you probably would have knowledge with regard to the King County Building Association and the Columbia Center National Bank in that the King County Building Association was building the building and you were providing correspondent services and finding officers and purchasing facilities for that same bank?

A. Yes.

Q. So that, therefore, your statement with regard to your lack of knowledge at to the cost at which the building was leased to the Columbia Center National Bank, and the cost to the King County Building Association, is not entirely correct, is it?

A. Well, you recall that I said I didn't know if those numbers were right at the final stage and I said in the early testimony I did not have knowledge of actual final figures.

I have knowledge, yes, I did not deny that.

Q. Isn't it true that they were ballpark figures at that time but that they were generally accurate at that time and, if they are inaccurate, they are inaccurate on the low side and that the final cost of the building would be higher?

A. Yes, I suppose, yes.

Q. So, therefore, the subsidy, or the loss incurred in leasing at $180,000 as opposed to an actual cost at that time of $230,000 is a low figure?

A. I don't recall having information on the final figures.

Q. But you would agree that the final figure would be at least $230,000, if not more?

A. Yes.

Q. Is the final figure, to your knowledge, at least $180,000 at which it was going to be leased out at?

A. Yes.

Q. So, therefore, it is generally true, or within the parameter of truth, when we say that the King County Building Company was sustaining a $50,000 loss, or underwriting a $50,000 cost itself, in leasing the building for $180,000 for the Columbia Center National Bank; yes or no?

A. Yes. Could I add, please?

Q. Yes, you may explain.

A. Now, as I said earlier, I don't know what the King County Building Company had between the Columbia Center National Bank. There may have been some other provisions that I am not aware of to recapture that so-called loss. I don't know about that.

Q. Is the King County Building Company a 100 percent owned subsidiary of the Marine Bancorporation, to your knowledge?

A. Yes, it is.

Q. Is the National Bank of Commerce, to your knowledge, a 100 percent owned subsidiary of the Marine Bancorporation?

A. Yes.

Q. Directing your attention to the last sentence of the document Abersfeller's Exhibit 2, it says:

> "Further, that King County Building would purchase the equipment for Columbia Center National Bank, and lease back to the bank on very favorable terms."

What would be "very favorable terms", under those circumstances?

A. I don't recall having any information, no knowledge, of those terms.

Q. Mr. Abersfeller, you used the term "very favorable terms" in your memorandum at that time so that you must have had some knowledge of the terms.

A. Not necessarily.

Q. You just pull things out of the air like that normally?

A. Well, again, I have no knowledge of the workings of the King County Building Company.

Q. If you had no knowledge how did you know they were going to lease back at very favorable terms?

A. The knowledge of the terms is what I am driving at. I say very favorable terms but I don't know what the terms were.

Q. You did not know what the exact figures were?

A. No, I do not.

Q. However, you were inclined to believe that they would be favorable?

A. Yes.

Q. Why?

A. As stated earlier, because of the profitability, maybe, or the earning capacity of the bank, getting it off the ground.

I just don't know those things. I am not in King County Building.

Q. I realize that but you still had reason to believe that King County Building would give favorable terms under the equipment lease?

A. That is right.

Q. I am asking you why you know that.

A. Well, no doubt because the officer of King County Building mentioned it. If Mr. Price was the officer of King County Building at that time, maybe he is the one that said, but I don't know if he was in this meeting referred to in the first two sentences.

Q. Is it possible that Mr. Price was an officer of King County Building at that time?

A. It is possible. I just don't know. I don't have that information.

BY MR. VERVEER:

Q. Mr. Abersfeller, in your capacity as correspondent service director for the National Bank of Commerce, are you familiar with the Columbia Center National Bank correspondent account?

A. Yes, I am.

Q. Does Columbia Center National Bank to your knowledge maintain a correspondent account with any bank aside from the National Bank of Commerce?

A. Not to my knowledge.

Q. Does the National Bank of Commerce accept participation on loan from Columbia Center National Bank?

A. Yes, we do.

Q. Do you accept such participation on precisely the same basis that you do from all your other correspondent banks?

A. Yes.

Q. Does Columbia Center National Bank, to your knowledge, sell participations to any other banks?

A. Not to my knowledge.

Q. Have you ever had occasion to turn down participation from the Columbia Center National Bank?

A. You are talking to me as an individual?

Q. The National Bank of Commerce.

A. The National Bank of Commerce, not to my knowledge.

Q. You are unaware of any declinations to accept participation by the National Bank of Commerce?

A. No.

Q. Does the National Bank of Commerce accept 100 percent participations from correspondent banks?

A. Yes, we do.

Q. Do you accept 100 percent participation from the Columbia Center National Bank?

A. Yes, we have.

Q. In comparing the frequency with which the National Bank of Commerce accepts 100 percent participation from other banks with the acceptance of such participation from the Columbia Center National Bank, is it

fair to say there is a higher incidence with regard to the Columbia Center National Bank?

A. Yes.

Q. Would you care to make any comparison between the frequency of the Columbia Center National Bank and those of other correspondent banks?

A. Well, you see, I really don't any more get into the credit side of things as I did earlier and, so far as 100 percent participation is concerned, there aren't that many more on 100 percent basis with the Columbia Center National Bank over another bank. We participate with the Columbia Center but most of the time they take their full amount.

Q. Is it true that if the Columbia Center National Bank has no other correspondents that a declination to accept participation by the National Bank of Commerce essentially means that it cannot make a loan?

A. No, I don't think so. They could go to another bank. They don't have to establish a correspondent bank account to sell a participation.

Q. To your knowledge has the Columbia Center National Bank ever done that?

A. Not to my knowledge.

Q. If the bank were frequently to make, or to accept, 100 percent participation from the correspondent account, would that make the bank which originated the loan tantamount to a grant?

A. No. I guess the word "frequently" depends upon how frequent is "frequently"; but, oftentimes in given areas, and I could imagine this happening in other areas too where a bank has large lending customers and large borrowers, and they are limited because of their capital structure, and it certainly does not mean if it is a branch we participate on a 100 percent basis with several banks in the course of our business.

For example, the Everett, a large bank.

Q. Does the Columbia Center National Bank, to your knowledge, have such large borrowing customers?

A. Yes, one in particular.

Q. Who is that customer?

A. Neil F. Lampson, Inc.

Q. Prior to the organization of the Columbia Center National Bank, did Neil F. Lampson, Inc., have any relationship to the National Bank of Commerce?

A. Yes, it did, and he also had, as I recall others did too, did a lot of business with the Seattle First National Bank and others, as I recall.

Q. Where is Neil F. Lampson, Inc., located?

A. In Kennewick.

Q. Do you know who the principals of Neil F. Lampson, Inc., are?

A. Not all of them. I know Neil F. Lampson.

Q. Do you know any others?

A. I believe his wife.

Q. Anyone beyond that?

A. I don't know.

Q. Do you know how large Neil F. Lampson, Inc., is?

A. You mean his net worth, or things like that, or how much business they do, and so on?

Q. Yes.

A. I can't tell you right off, I don't remember, but the information is there. I would be guessing.

Q. What are their credit needs, generally?

A. Well, they deal in heavy equipment, primarily, and the leasing of heavy equipment. I really don't handle those credits so I am not totally familiar with all of the ramifications.

Q. Does Neil F. Lampson, Inc., operate in other parts of the state?

A. Other parts of the state?

Q. Aside from the Kennewick.

A. Well, so far as I know, he operates internationally.

Q. Where are they headquartered?

A. Kennewick. You asked that.

MR. TORRE: Off the record.

(Off the record colloquy.)

MR. VERVEER: Back on the record.

BY MR. VERVEER:

Q. Mr. Abersfeller, you said that Neil F. Lampson, Inc., operates internationally?

A. Yes.

Q. How would you characterize their account? Would it be a regional account, a national account, for bank purposes?

A. I don't know if I am really qualified to answer that. I would say a local account. He operates internationally through joint venturing with others.

Q. Mr. Abersfeller, are you saying—

MR. VERVEER: Strike that.

BY MR. VERVEER:

Q. (Continuing) Mr. Abersfeller, would a Portland bank find Neil F. Lampson, Inc., an attractive customer?

A. I don't know if I am really qualified to answer that for a Portland Bank.

Based on what?

Q. Is the Neil F. Lampson, Inc., business valuable enough to interest a bank as far away as Portland?

A. That is kind of difficult question to answer because, without knowing a bank's credit policy like that, I don't know. That is a difficult question.

Q. Mr. Abersfeller, if the National Bank of Commerce were located in Portland instead of Seattle, would it find the Neil F. Lampson account attractive?

A. Well, I don't know and I will tell you why I don't know, because I don't handle those credits, and I just don't handle credits and I don't know.

Q. Do you know if, prior to 1969, the National Bank of Commerce was handling credits to Neil F. Lampson, Inc.?

A. I don't know that. I don't remember.

Q. Mr. Abersfeller, I have a document that I would like you to look at, headed "Information Memoranda, Columbia Center National Bank", and in the upper left-hand corner the date source is 6-4-70, and the dictator's initials are S.D.C.

The next entry is 7-6-70 with an indication that F.A.A. was the dictator.

I would like you to look at this document, please.

MR. TORRE: Off the record.

(Off the record colloquy)

MR. VERVEER: Back on the record.

A. You are talking about the two comments here both dated 7-6-70, or just the first one?

BY MR. VERVEER:

Q. I am concerned at this point with just the first comment dated 7-6-70.

A. All right.

Q. Could you please read that comment, Mr. Abersfeller?

A. This is dated July 6th, 1970.

"This morning John Horning called and said that he had an illegal loan to Neil F. Lampson, Inc. Neil needed the money right away so John lent it Friday.

"The loan, $30,000 on demand, is secured by a $25,000 Time Certificate of Deposit. John wanted us to take about $18,000 of this as an overline.

"I told him that we would. The rate is 9½% and, as mentioned, is partially secured by the Time Certificate of Deposit."

MR. HARTMAN: Does that have an exhibit number?

MR. VERVEER: Not yet.

BY MR. VERVEER:

Q. Will you explain what the first paragraph that you read means?

A. That we participated with the—

Q. (Interposing) No, "This morning John Horning called—" and so forth; what does that mean to you as a banker, the first sentence?

A. It means that Mr. Lampson has an illegal loan because he over the banks' limit by miscalculation, evidently, by the Columbia Center National Bank.

Mr. Lampson, as I recall, has several companies and the examiner—I mean, Mr. Horning, discovered he had an overline at that time.

Q. Reading the second sentence in that paragraph, does that second sentence appear to be consistent with the explanation you just made of in inadvertent overline?

A. No, it does not.

Q. Does it appear to be rather consistent with an intentional overline loan?

A. No, it does not.

Q. What is the explanation?

A. Well, if you were to investigate this you would find that maybe I didn't say this the way—my words are not just right but Mr. Horning, I am very confident, would not in any way make an illegal loan illegally. It was through an oversight.

BY MR. TORRE:

Q. You mean, make an illegal loan intentionally?

A. Oh, yes, intentionally, that is what I meant to say.

BY MR. VERVEER:

Q. It would appear—

A. (Interposing) He evidently discovered it after it was made, is the way I would explain it. My whole feeling is that it would not happen intentionally.

Q. Do you get many such calls from the National Bank of Commerce correspondent accounts, from bankers who have made overline loans and now request participation?

A. We don't get many, no.

Q. How many such calls have you received in the last month?

A. I don't recall any.

Q. What about this year?

A. There would have been, maybe, one or two. I would have to go back and look to verify that.

Q. Do you recall the names of the banks involved and the names of the credit accounts?

A. There could have been the First National Bank of Stanwood. I would have to look at that.

Q. In other words, in instances where this has occurred, do you immediately inform the bank which has called to meet that overline?

A. Say that again?

Q. In instances where you have received a phone call of that sort discussed, is it your policy to immediately inform the banker of your decision, of the National Bank of Commerce's decision?

A. Not always. We have some discussion usually between the loan group.

Q. Does it appear in the memorandum you have just read into the record that such a discussion took place in this instance?

A. No. It depends upon the amount and the security.

Q. In terms of the acceptance of the participations, does the National Bank of Commerce have a special policy with respect to Columbia Center National Bank?

A. To my knowledge, we do not.

MR. VERVEER: We would like to offer this document as Abersfeller's Exhibit No. 3.

(Abersfeller's Exhibit No. 3 marked for identification.)

BY MR. VERVEER:

Q. Mr. Abersfeller, I have here a two page document entitled Loan Journal. I would like to ask you to look at it.

(Document handed to witness.)

Q. (Continuing) Have you had an opportunity to examine that, Mr. Abersfeller?

A. Yes, I have.

Q. Could you describe what that is?

A. A Loan Journal.

Q. Can you identify the bank whose loan journal that is?

A. I believe it to be the Columbia Center National Bank.

Q. Do you know of any reason why the Columbia Center National Bank loan journal would be in the files of the National Bank of Commerce?

MR. HARTMAN: Do we know that that is where that came from?

MR. VERVEER: I will ask counsel to stipulate to that.

A. Probably because Mr. Horning gave it to me.

BY MR. VERVEER:

Q. Why would a banker give you his loan journal, Mr. Abersfeller?

A. Well, mostly because Mr. Horning and I are friends and I think he wanted to pass that information on to me as banker to banker.

Q. Mr. Abersfeller, don't bankers normally consider their loan relationships to be confidential, the customer's loan and deposit relationships?

A. Yes, I would think so.

Q. Wouldn't it be unusual for Mr. Horning to turn over his loan journal on the basis of his friendship?

A. Not with Mr. Horning, I wouldn't think so.

MR. VERVEER: Please read the question and the answer?

(Preceding question and answer read by the Reporter.)

BY MR. VERVEER:

Q. Do I understand that you have just testified that this would not be an unusual thing?

A. That doesn't sound right, does it? It would have to be an unusual thing.

Q. How many others—

A. (Interposing) Could I say something now?

Q. Surely.

A. As I said earlier, Mr. Horning and I have been friends for a long time, and we just share things, like he shared things with me on a personal basis and I have been that close to the man.

Q. Mr. Abersfeller, even considering your close personal friendship with Mr. Horning, isn't it fairly likely that most bankers would regard the conveying of a loan journal from their bank to that of—to a banker representing a different bank as unprofessional conduct?

A. I don't know if I agree to that, or not. Professional conduct, you mean?

It may not be prudent but I don't know whether it would be unprofessional, or not.

Q. Would bankers, as a class, be prepared to represent to their depositers and their loan customers that their deposit and loan business might, on the basis of friendship or from some other non-business reason, be broadcast to other banks and other bankers and other individuals?

A. I look at this information as perhaps other professional people do, as doctors, for example. They share information on their patients with one another.

Q. Does the existence of this document in the file of the National Bank of Commerce have anything to do with the professional relationship of Mr. Horning and yourself as bankers?

Is this document in your files in any sense in the normal course of business between the National Bank of Commerce and the Columbia Center National Bank?

A. It is not.

Q. It is not?

A. No.

Q. The only way you can account for this document being in the National Bank of Commerce files is on the basis that it is a personal matter that Mr. Horning gave it to you?

A. That is right.

Q. Have you any idea why he might have thought you might be interested in it?

A. Only to see the loan totals, to demonstrate how the bank has grown, and so on. This was a given month of activity.

Q. Mr. Abersfeller, isn't it possible that, in fact, you, other members of the correspondent department of the National Bank of Commerce, and the loan department assist in supervising the loans of the Columbia Center National Bank?

A. We do not, to my knowledge. I do not and so far as I know, no one else supervises loans coming to the Columbia Center National Bank.

Is that what you are saying?

Not to my knowledge.

Q. You don't provide them with advice and assistance?

A. No more than we would for any other correspondent bank. We provide some assistance to other banks we

do business with, do advise but as long as they are on their own.

Q. To go back for just a minute—

MR. VERVEER: Strike that, please.

(Brief pause.)

BY MR. VERVEER:

Q. (Continuing) Could I ask if you know if you have any other documents like this in your files?

A. Like that one? Not to my knowledge.

Q. This is the only loan journal you have ever received from Mr. Horning?

A. As far as I can remember, that is right.

Q. Have any other bankers, on the basis of friendship, or for reasons other than professional, submitted documents like this to you?

A. No. I have seen them in their place of business, however.

Q. They have permitted you to examine them?

A. Not to examine them but, the word "examine" is to go over and look them over.

Q. To peruse, adequately to note the name of the borrower and the rate and the amount?

A. I would have to decline that. I don't remember that that happened.

Q. How far does advice that is offered in extending it to correspondent services stretch when it comes to the offering of credit?

A. Well, again, now to my knowledge because I don't handle the credits, it primarily surrounds documentation, like security agreements and that sort of thing, filing and what not; on the percentage, perhaps, on certain types of loans, maybe in accounts receivable financing and that sort of things.

Q. Largely technical information, not having to do with judging whether a person is credit worthy, or what rate of interest you advise them to charge, information apart from those things?

A. Yes, so far as I know, yes.

MR. VERVEER: Counsel, I am going to ask you if you are prepared to stipulate if this document came from the files of the National Bank of Commerce?

MR. MOEN: No, I cannot so stipulate, because I have no knowledge of it.

MR. TORRE: Why don't you have knowledge of it?

MR. MOEN: I have knowledge of it when he first showed it to me.

MR. TORRE: This document is in the class of documents that were copied from the files of the National Bank of Commerce which you turned over to us eight months after the Rule 34 Request for such document. Now, you have had copies of this document in your possession prior to the deposition, is that correct?

MR. MOEN: That is not correct.

MR. TORRE: How can you deny that?

MR. MOEN: I am denying it, Mr. Torre. I have never seen the document before. Where you got it from, I don't know.

MR. TORRE: Why have you not seen the document? Is that because you have not looked at the files?

MR. MOEN: I don't know. Maybe it wasn't in the files. How do I know? What I am telling you is I have not seen the file and I will not so stipulate.

MR. VERVEER: Are you saying you have turned over documents to us you have not looked at?

MR. MOEN: A lot of documents, yes.

MR. TORRE: Did you supervise the file search?

MR. MOEN: Whose file search?

MR. TORRE: Of the National Bank of Commerce and the Marine Bancorporation?

MR. MOEN: Yes.

MR. VERVEER: Did you review all the documents?

MR. MOEN: I thought I did, yes.

MR. TORRE: You just said you did not read all the documents you gave us?

MR. MOEN: Right.

MR. TORRE: You read some and you did not read others?

MR. MOEN: Right.

MR. VERVEER: Mr. Moen, would you institute a file search to uncover these documents in the National Bank of Commerce?

MR. MOEN: You tell me. There is nothing on that document to identify it.

MR. TORRE: I think you will find this document in the copies of the documents in the Columbia Center National Bank file in the possession or under the custody and control of Kenneth C. Clark, cashier of the bank.

Copies of this document were made by Mr. Hacker of the credit department of the bank and given to you and to me on August 15, 1972, in the office of the bank so that I think you will find it.

You are still not willing to stipulate?

MR. MOEN: I am not willing to stipulate. I have told you that. I have no personal knowledge of where you got the document. I don't think it is properly identified and I will not so stipulate.

MR. VERVEER: I would like this marked as Abersfeller's Exhibit No. 4.

(Abersfeller's Exhibit No. 4 marked for identification.)

MR. TORRE: Mr. Hartman, you have a copy of that in your possession. How did you get that copy?

MR. HARTMAN: You gave it to me.

MR. VERVEER: Are you quite sure about that, Mr. Hartman?

MR. HARTMAN: I don't even know if I have got a copy.

MR. VERVEER: Did we give you those documents or did Mr. Moen?

MR. HARTMAN: I don't know.

MR. VERVEER: You don't recall?

MR. HARTMAN: I don't even know if I have a copy. Let's take one thing at a time.

MR. TORRE: Search your files and see if you have a copy.

BY MR. VERVEER:

Q. While Mr. Hartman is looking into his document, Mr. Abersfeller, do you recall receiving that loan journal from Mr. Horning or from any source?

A. Yes, received from Mr. Horning.

Q. You do recall that?

A. Yes.

Q. Do you recall in any way the circumstances of the time?

A. Yes, I was on a call to Kennewick and dropped into the bank and we were talking about loans and other things, and, there it was, and he said, "here, have a copy", again based on—

BY MR. TORRE:

Q. (Interposing) Was this copy placed in the files of the National Bank of Commerce by yourself?

A. No, it was not placed by me.

Q. Who placed it in the files? Did you direct it be placed in the files?

A. Probably so. That is where it was.

MR. TORRE: In view of Mr. Abersfeller's testimony do you still refuse to stipulate that it was part of the files?

MR. MOEN: I refuse to stipulate it was part of the files.

MR. TORRE: How do you propose to cure that problem?

MR. MOEN: I don't know, that is your problem.

MR. TORRE: Why is it my problem?

MR. MOEN: You are offering the exhibit.

MR. TORRE: That is correct. Where did I get the exhibit?

MR. MOEN: I don't know.

MR. TORRE: Did I manufacture the exhibit?

MR. MOEN: I don't know.

MR. TORRE: Did I steal the exhibit?

MR. MOEN: I don't know.

MR. TORRE: You don't know?

MR. MOEN: No, how do I know where you got the exhibit?

MR. TORRE: Are you going to persist in engaging in this pettifogging activity or are you going to cooperate by stipulating?

MR. MOEN: I have given you my answer. Why waste time.

BY MR. VERVEER:

Q. Mr. Abersfeller, I have one other matter I would like to discuss with you.

Are you familiar with the Bank of Fairfield?

A. Yes.

Q. Have you ever had occasion to visit the Bank of Fairfield?

A. Yes, I have.

Q. I have a document here entitled "Information Memoranda", "Bank of Fairfield", date-source 3-9-71, and the dictator's initials F.A.A., and I would like to have you look at that, please.

MR. HARTMAN: What document are we talking about now? I am trying to find two documents at once.

MR. VERVEER: Off the record.

(Off the record colloquy.)

MR. VERVEER: On the record.

BY MR. VERVEER:

Q. (Continuing) Mr. Abersfeller, do you recognize this document?

A. Yes, I do.

Q. You offered it?

A. Yes, I did.

Q. Is it an accurate document, in the sense that it imparts the facts as you understood them at the time you wrote them down?

A. Yes.

Q. Generally, could you very quickly summarize what the document says?

A. It reviews a luncheon with Bill and J. Wernz of the Bank of Fairfield and a discussion we had about the banking—the competitive banking situation in the State of Washington.

Q. Does this memorandum also relate the possibility that the Bank of Fairfield might one day be for sale?

A. In my opinion, yes. Mr. Wernz did not say that. It is just strictly my conjecture.

Q. It says in your judgment that the bank might one day be available for acquisition?

A. That is right.

Q. Where is Fairfield?

A. Fairfield is 20, maybe 30, miles out of Spokane in what they call the valley southeast of Spokane.

Q. It is 30 miles outside of Spokane at the most, is that correct?

A. Yes.

MR. VERVEER: That is all I have.

I would like this marked as Abersfeller's Exhibit No. 5.

(Abersfeller's Exhibit No. 5 marked for identification.)

MR. HARTMAN: Is that it?

MR. VERVEER: Mr. Moen, you have no questions?

MR. MOEN: No questions.

MR. HARTMAN: I have none either.

MR. VERVEER: We will not waive signature.

MR. MOEN: We will not waive signature.

(Deposition concluded at 11:50 o'clock a.m., August 17, 1972.)

/s/ Frank A. Abersfeller

ABERSFELLER DEPOSITION EXHIBIT 1

INFORMATION MEMORANDA

NAME Washington Trust Bank

Spokane, Washington BRANCH

Date Source	Comments or Sundry Information
4/12/71 FAA:rgm	A few weeks ago I was in Spokane visiting with Bill Scammell and W. D. McLaughlin at Washington Trust Bank. Conversation led to our correspondent bank relationships in Montana. Both Bill and Mac said they have one account in Montana, the Valley Bank at Kalispell. The Valley Bank is a relatively new bank in Kalispell, having opened about seven years ago. It is a fast growing bank with excellent management. Average balances have been between $200,000.00 and $300,000.00. The Valley Bank acts as a clearing bank for some smaller banks in the Kalispell area, Ronan, Polson and Whitefish. These banks send their cash letters to the Valley Bank which sends the consolidated remittances to Washington Trust Bank in Spokane for credit. The availability factor does not seem to be a prime concern of the Valley Bank. Both gentlemen at Washington Trust agree with us that Montana offers a great future in developing correspondent bank accounts, especially Western Montana. We observed that as time goes on more and more bankers are looking to the West rather than the East for correspondent bank services. Montana is located in the 9th Federal Reserve District, headquartered out of Minneapolis. The Minneapolis-St. Paul banks have been very active in assist-

Date Source	Comments or Sundry Information
4/12/71 FAA.rgm	ing banks with participations, officer loans and new bank starts.

Montana is a non-branch banking state; many of the banks are independently owned. However, there is a First Bank System that operates similarly to the Western Bankcorporation throughout the State of Montana. Northwest Banco also operates system banks in Montana. These banks, however, are independently operated with a President, officers and staff performing their duties independently from others in the state owned through the First Bank System or Northwest Banco system.

Banks in Montana which do business with us are as follows:

Bozeman	Security Bank and Trust
Broadus	Powder River County Bank
Butte	First National Bank
Columbus	Yellowstone Bank
Glasgow	First National Bank
Glendive	First National Bank
Great Falls	Montana Bank
Hardin	Big Horn County State Bank
Havre	First National Bank in Havre
Helena	First National Bank & Trust Co.
Helena	First Security Bank

Date Source	Comments or Sundry Information
Helena	Commerce Bank and Trust Co.
Missoula	First National Bank
Philipsburg	Flint Creek Valley Bank
Shelby	First State Bank
Shelby	Toole County State Bank
Thompson Falls	First State Bank
Whitefish	First National Bank
Whitefish	First State Bank

* * * *

4/12/71
FAA.rgm

The potential of acquiring new correspondent bank relationships in Montana is in my estimation very good. Considering our merger with Washington Trust Bank we should plan to devote some time now on the banks in Montana to develop correspondent bank relationships.

* * * *

ABERSFELLER DEPOSITION EXHIBIT 2 IS REPRODUCED AS GX J-15 ON PAGE 1391.

INFORMATION MEMORANDA

NAME Columbia Center National Bank BRANCH

DATE SOURCE	COMMENTS OR SUNDRY INFORMATION
6-4-70 SDC:dw	Today I received a letter from John Horning requesting an expression of interest in a loan of about $80,000 to a group of investors who want to build a series of fourplexes in the Pasco area. I told John that we would just not be interested in this type of credit at this time. Incidently, one of the investors in this complex is Dr. Richard Hewett, for whom we declined to loan $30,000 secured by his residence at the Richland branch some time ago, because the purpose of the loan was to invest in this apartment house complex. XXXXXXXXX
7/6/70 FAA:rgm cc:Neil F. Lampson, Credit File	This morning John Horning called and said that he had an illegal loan to Neil F. Lampson, Inc. Neil needed the money right away so John lent it Friday. The loan, $30,000.00 on demand, is secured by a $25,000.00 time Certificate of Deposit. John wanted us to take about $18,000.00 of this as an overline. I told him that we would. The rate is 9½% and, as mentioned, is partially secured by the time Certificate of Deposit.
7/6/70 FAA:rgm cc:Transporters, Inc.. Credit File	Awhile ago John Horning called and wanted us to participate with him in a $120,000.00 loan to Neil F. Lampson, Inc. The loan will be secured by a Security Agreement on a crane, an assignment of lease proceeds, and a $100,000.00 time Certificate of Deposit. This is a 100% advance for the purchase of the crane at 9½%. I talked with John Mangels about this, and he agreed to take the participation, based primarily upon the time Certificate of Deposit. Horning agreed to increase balances of his account here by the amount of the time Certificate of Deposit when the loan is made.

Abersfeller EXHIBIT 3
AUG 17
S. V. HALVORSON
REPORTER

ABM 154 5-69

LOAN JOURNAL

Date	Number	Name	Rate	Commercial Loans	Agricultural Loans	Instalment Loans	Security
10-1	1878	Gary Davis	10%	$ 300.00	$	$	Open
10-4	1879	Dexter Lincoln	12%			202.56	Recourse
10-4	1880	Dale R. Maine	9 1/2%	400.00			Open
10-4	1881	Larry Lee	10 1/2%	122.25			Open
10-4	1882	Keith Sterling	9%			2,558.61	Auto
10-4	1883	Able Industrial(Fac)	8 3/4%	35,000.00			Inv. and R/E
10-4	1884	Doug A. Coleman	12%			537.60	Auto
10-5	1885	Richard D. Reed	11%			2,424.60	Auto
10-6	1886	Exec Air Fleet	7 1/2%	3,500.00			Open
10-7	1887	Ivan Rogers	9%		3,554.00		Auto & Pickup
10-7	1888	Wallace F. Louden	9%			3,023.44	Auto
10-7	1889	E. J. Guilleuna	12%			649.04	Auto
10-7	1890	James F. Gates	9%	4,500.00			Open
10-7	1892	Exec Air Fleet	7 1/2%	12,000.00			Open
10-7	1893	Joseph H. Bonner	12%			768.39	Auto
10-7	1894	Kayla Copp	10 1/2%			556.80	Auto
10-7	1895	David McCullough	12%	1,900.00			Open
10-8	1891	Snelling & Snelling	12%			270.59	Lease Contract
10-11	1896	Gerald M. Wagner	12%			487.52	Open
10-11	1897	GA Gilson Bkpptng	12%			489.22	Lease Contract
10-11	1898	Thompson & Lampson	11%			843.58	Lease Contract
10-11	1899	B. L. Wagner	HC	451.00			Open
10-13	1900	Ivan Rogers	9%		1,500.00		Crops
10-13	1901	Earl Lewis	8%	1,000.00			Open
10-13	1902	William H. Adkins	11%			3,031.36	Auto
10-13	1903	Frank Rogers	10%		1,000.00		Crops
10-14	1904	E. J. Lukson, M.D.	7 1/2%	2,000.00			Open
10-14	1905	P. Petersen Ins.	8 1/2%	5,000.00			Open
10-15	1906	D. G. McCullough	12%			1,131.12	Auto
10-15	1907	Park Hill Corp.	8 1/2%	20,000.00			Guarantead
10-18	1908	Albert J. Phillips	11%			2,828.64	Auto
10-18	1909	Calvin Phillips	11%			1,297.21	Auto
10-18	1910	Noah's Little Ark	9 1/2%	1,000.00			Open
10-19	1911	Stork's Nest	8%	1,500.00			Open
10-19	1912	Stork's Nest	8%	7,500.00			Open
10-19	1913	Robert Stork	10%			3,100.68	Auto
10-20	1914	Werner L. Cros	10%			3,927.04	Auto
10-20	1915	Bow Trailer Sales	8 1/2%	1,880.00			Trailers
10-20	1916	Diehl R. Rattig	9%	5,484.88			Stock
10-20	1917	Wendell R. Knere	12%	400.00			Open
10-20	1918	F. M. Cochrane	6%	7,500.00			Open
10-21	1919	Loren K. Sharp	10%			7,227.70	Trailer
10-25	1920	Robert H. Brown	8 1/4%	30,000.00			Stocks
10-25	1922	James S. Day	9%			5,482.00	Auto
10-25	1923	George Brandel	12%			1,066.20	Open
10-25	1924	Bow Trailer Sales	8 1/2%	5,080.00			Trailers

Abercrombie & Lamont
AUG 17 5 V.A
EARL V. HAIN

Date	Number	Name	Rate	Commercial Loans	Agricultural Loans	Instalment Loans	Security
10-26	1925	Earl Lewis	8%	$ 2,500.00	$	$	Open
10-27	1926	James M. Lewis	12%			1,242.98	Open
10-27	1927	Richard Schutz	7 3/4%		5,000.00		Open
10-27	1928	James W. Narmon	12%			850.00	Recourse
10-28	1929	Lonnie T. Newsom	10%			2,589.62	Auto
10-28	1930	V. E. VanDusen, Jr.	10 1/2%			2,103.19	Equipment
10-29	1931	Raymond Perchalski	12%	650.00			Open
10-29	1932	Ray L. Adams	12.85%			182.50	Open
		Loans Made		$149,068.13	$ 11,054.00	$ 50,892.19	$
		Less: Loans Paid		93,458.73	2,710.28	45,315.62	910.56
		Balance 9-30-71		851,070.48	194,669.62	712,108.52	268,027.11
		Balance 10-29-71		$906,679.88	$203,013.34	$717,928.24	$267,116.55

ABERSFELLER DEPOSITION EXHIBIT 5 IS REPRODUCED AS GX G-1 ON PAGE 1279.

DEPOSITION OF ANDREW PRICE, JR.
TAKEN AUGUST 17, 1972

• • • •

DIRECT EXAMINATION

BY MR. TORRE:

Q. State your name for the record.
A. Andrew Price, Jr.
Q. Your address?
A. 601-36th Avenue East, Seattle.
Q. Are you employed by the National Bank of Commerce?
A. Yes.
Q. What is your position?
A. Chairman of the Board.
Q. How long have you been Chairman of the Board?
A. About seven years.
Q. Were you with the National Bank of Commerce prior to being Chairman of the Board?
A. Yes.
Q. In what capacity?
A. Various capacities starting out out of college and moving through the ranks.
Q. Could you please trace your history within the National Bank of Commerce?
A. Briefly, I started out at the University Branch in 1947 in September and was there several years, then came to the Main Office of the bank having previously worked in the Note Department, Savings Department, Bookkeeping Department, Real Estate Loan Department at the University Branch, and then came down to the Main Office and worked in the Auditing Department, the Credit Department, and that covers a span of six years up until 1953, and in 1953 I became Assistant Manager in the—what became the Kirkland Office of the bank—what in time became the National Bank of Commerce.

I became Assistant Manager at that time and was there for two years and then came back to the head office in 1955, and I worked in various departments in the head office after that but no more in branches.

Q. What position did you have at that time when you returned?

A. Assistant Cashier and Assistant Manager of the Kirkland Office.

Q. What title did you have?

A. Assistant Cashier.

Q. Continue, please.

A. Well, then, in the head office I was in administrative positions from 1955 until now, about 17 years, I guess.

Q. What administrative positions were these? What were your titles in these various positions?

A. Moving from Assistant Cashier through Assistant Vice-President and Vice-President, I had responsibilities in the area of credits, business development and public relations, branch expansion activities, that never included any trust activities, also some international activities but not in direct assignments but on loan committees, and I think that's it.

Q. When did you become President of the National Bank of Commerce?

A. I never was President. I moved from being the Vice-President and Senior Vice-President, I then became a Chairman in 19—I believe it was 1964 or '65, about seven years ago.

Q. Were you an officer or director of any other subsidiary of Marine Bancorporation during your career?

A. During most of the years after returning in 1955 to the bank, I was also an officer of Marine Bancorporation, became its president in about 1965, along in that period.

I also was an officer and President of King County Building Company during that time.

Q. During what time is that?

A. During that same span of years after 1955.

Q. How long were you an officer of the King County Building Company?

A. Fifteen years.

Q. The time span in years?

A. About '56 to now.

Q. Are you still an officer of that company?

A. Yes.

Q. Is it fair to assume that in your career at the bank, you served on practically all management committees of the bank?

A. I think so, yes.

Q. You served on the Branching Committee?

A. Yes.

Q. Loan Committee?

A. Yes.

Q. Mr. Price, did Mr. Moen give you some documents prior to this deposition?

A. Yes.

Q. Would you please describe generally the documents that he gave to you?

A. One set of documents appears to cover principally the Columbia Center National Bank, and I guess the other does too. The other new set of documents also covers, I think, solely the Columbia Center National Bank.

Q. The first set of documents you referred to, can they be generally described as in-house memoranda relating to the Columbia Center National Bank?

A. Yes, I think all of this is in-house.

Q. For the record, those documents will be referred to as Price Exhibit No. 1, sub-numbered 1 through 40.

(Price Deposition Exhibit No. 1-1 through 1-40 marked for identification by the reporter.)

Q. Do you recognize these documents as being documents prepared by you?

A. Many of them have been prepared by me. I see a number of other initials on them, and I think I have seen most of them as they were prepared. Very few, I don't believe I have seen before.

Q. Is the document that you have a true and authentic copy of the original?

A. I think so.

Q. Were they prepared as a part of the ordinary business of the bank by you in your capacity as an officer of the bank?

A. They appear to be, I am sure they were.

Q. You stated you have examined the documents and you have read them. Are the statements contained therein true to the best of your knowledge?

A. I think they are, yes, to the best of my knowledge they are.

Q. Is it fair to conclude or is it true to conclude from reading that document that the National Bank of Commerce was the prime mover in causing the organization and chartering of the Columbia Center National Bank?

A. I assume that—I am sure you know by now we were approached by Allied Stores.

Q. Will you answer yes or no and then explain, please?

A. Yes.

MR. HARTMAN: Have you finished your answer, Mr. Price?

THE WITNESS: I don't know whether he wants more.

MR. MOEN: Yes. Wait until he gives you another question.

Q. (By Mr. Torre) Was it the intention of the bank in instigating the organization of the Columbia Center National Bank to acquire that bank at some time in the future as a branch?

A. No, it was not.

Q. Why was it not the intention of the bank at that time?

A. I don't think it was possible for us to consider that.

Q. Why was it not possible?

A. If it would have been possible, we would have enjoyed having the branch in the beginning. As these documents indicated, we examined—

Q. Are you saying that if you could have put a de novo branch into Columbia Center initially, you would have done so?

A. I would have.

Q. But being unable to do so, you chose to sponsor the organization of the Columbia Center National Bank?

MR. MOEN: Just a minute, I thought we agreed yesterday before we use the term "sponsor," we would define it.

Q. (By Mr. Torre) By "sponsor," I mean cause the organization or promote individuals to organize the bank.

A. Well, I think we encouraged people to take steps to start a bank there as we were encouraged to do by our customer, Allied Stores.

Q. You did this because you were foreclosed from legally branching de novo into that area?

A. I am not sure that we did it because we were legally foreclosed, the fact is that we were legally foreclosed.

Q. Therefore—

A. The developer wanted a bank in the center.

Q. But you also wanted a bank in the center?

A. We think our history indicates that we are in shopping centers.

Q. Isn't it true you wanted to be in Columbia Center?

A. Certainly.

Q. Isn't it also true, Mr. Price, that it was officers of the National Bank of Commerce which approached Mr. Loney as a possible organizer for this bank?

A. Yes. But as far as I know, it was—I don't believe it was anyone else.

Q. Mr. Loney then did not originate the idea to create the Columbia Center National Bank?

A. I think—I prefer to just elaborate just a little bit on that and say that Mr. Loney was aware of the development of the center, and whether he had the idea before we went to him, he was familiar with banking and familiar with the fact this was going to be a regional center. But I think we went to him. Whether the idea had occurred to him or not before, I don't know. He was familiar with banking.

Q. I am not asking you to go inside Mr. Loney's mentality at the time, but to the best of your knowledge, it was you who initiated the contact?

A. Yes.

Q. Who approached Mr. Loney?

A. My recollection is that Mr. Beavers approached him.

Q. And Mr. Beavers is who?

A. Mr. Beavers was the manager of the Kennewick Branch of the bank. Mr. Beavers is retired from the National Bank of Commerce.

Q. The bank you referred to is the National Bank, the Kennewick Branch of the National Bank of Commerce?

A. Yes.

Q. When was your first meeting with Mr. Loney?

A. I really don't recall whether these indicate that, they may.

Q. What steps did the bank take to insure that it would be able or could eventually acquire or merge with the Columbia Center National Bank?

A. They took no such steps as far as I know. I am not aware of any steps that they took to assure—I don't think we could.

Q. What steps did the bank take to foreclose the possibility of another bank acquiring or merging with the Columbia Center National Bank?

A. None that I know of.

Q. What role did you play throughout the efforts initiated by the bank to organize the Columbia Center National Bank?

A. Maybe you could be just a little more precise.

Q. Is it fair to characterize you as field-marshaling the entire operation for the bank?

A. I don't think so. I think I was involved early in the stages more than I was later on because of the acquaintance with Allied Stores people, acquaintance with Mr. Sherwood of Sherwood and Roberts, and some of the people at the very outset of the concept of Columbia Center Shopping Center.

Q. How do you explain then the great frequency with which your initials appear in the documents which you have inspected prior to this deposition?

A. I wasn't aware that they appeared a whole lot more in the later stages of this than Mr. Buck's. There

were lots of initials and I was familiar with the Columbia Center area. I had audited there, I had been over there many times and am geographically familiar with it. I called on the branches in Kennewick and Richland, so I was familiar with that area, and I suppose things gravitated to me because of that.

Q. You were the Chairman of the Board of the bank at this time, is that correct?

A. Yes, I was.

Q. 1965?

A. Yes, '65.

Q. So you were the Chairman of the Board of the bank in 1965?

A. Yes.

Q. Thus, officially you had the final say so on any action the bank took on this?

A. No, I was not the chief executive of the bank, and so in that sense I didn't have the final say.

Q. Who was the chief executive?

A. Mr. Carlson, whom you have spoken to.

Q. Did he delegate to you the responsibility of overseeing this process of organization and chartering and issuing of stock to shareholders and et cetera?

A. This was after we had introduced the subject to Mr. Loney, this was his responsibility, and I think that people in the National Bank of Commerce who were approached like I was, and Abersfeller and others tried to be helpful and, of course, in a correspondent kind of way.

Q. Are you contending Mr. Loney was a free agent in the organization at this time?

A. Sure.

Q. Isn't it true that Mr. Loney was in constant contact with either you or Mr. Buck with regard to the organization of this bank?

A. In frequent contact might be a better word.

Q. Is it likely that he would take any action without checking with either you or Mr. Buck with regard to the organization of this bank?

A. I don't know that he didn't. We didn't ask him to, we weren't in a position to ask him to restrict himself in that way.

Q. The question, though, is in view of the fact that you approached him, isn't it a fact that he would feel an obligation at least to consult with you prior to taking any action?

A. I don't think so.

Q. Would it be fair to characterize your relationship with him as a joint venture, perhaps?

A. I don't think so.

Q. Did in fact Mr. Loney ever take any action with respect of this independent of consulting with you?

A. He certainly must have without consulting me because I wasn't aware of trips that he made, people that he talked to.

Q. Without focusing on any minutiae of his activity, I am referring to major actions he may have taken, filing the applications, contacting people to be officers, stockholders, suggesting people to be stockholders, arranging for leases of the ground, for the building of the bank, for the equipping of the bank. Did he do any of these things without consulting with the bank?

A. Yes, he did, because you get into stockholders, and that was a large part, familiarity with people I still haven't met and don't know; equipping of the bank, I think that gets into the later stage, because being an officer of King County, I had some knowledge. But I think that wasn't really Mr. Loney's area of responsibility at that time. He moved over into the management of the Columbia Center National Bank. So I think he took a good many actions, I am not sure that all the ones that you have mentioned in a general way really were his to take.

Q. What significant action can you point to that he took without consulting with officers of the National Bank of Commerce prior to taking such action?

A. I think the record indicates the actions I am aware of, and I am not sure what you are referring to that he might have done or might not have done. I think he did stay well in touch with us. We were the

ones who were personally acquainted with the developers of the shopping center, and most things related to that, a great many things related to that. On timing, he did stay close in touch with us, and I wouldn't contend to the contrary.

Q. Don't the files of the bank indicate very frequent correspondence or telephone contact or personal contact between Mr. Loney and the bank?

A. Yes.

Q. Therefore, there was very few hiatii, which would permit him to act as a free agent?

A. To the extent that he wanted to call on us, we were there and we tried to be helpful.

Q. Was the Comptroller of Currency or the Regional Representative of the Comptroller of Currency aware of your activities with regard to the organization in the Columbia Center National Bank?

A. Yes.

Q. Was he aware of your intention to eventually acquire that bank as a branch?

MR. MOEN: Now, just a minute, I am going to object to the form of the question. I don't think there is any proof yet they were going to acquire the branch. I think he answered the question just to the contrary.

Q. (By Mr. Torre) Did the Comptroller know that the National Bank of Commerce could not establish a de novo branch at Columbia Center?

A. Sure, yes.

Q. Was he aware of your desire to establish a branch in that area?

A. He knew the laws of the state and he knew it would be an important center, and I am sure he knew we would like to be there if we could.

Q. Did he ask why you were sponsoring the organization of the Columbia Center National Bank?

A. Again, I think there has been some discussion of definitions, and I prefer to use "encourage" because I think that is a more accurate way to describe our role.

He knew that the developers of the center wanted a bank there, and the Comptroller was concerned about the

strength of the bank, who its correspondent would be, and he wanted a strong correspondent for any bank that was established there. So to that extent, he knew of our interest in encouraging the formation of the bank and welcomed it.

Q. If you did not intend to eventually acquire the Columbia Center National Bank, why did you assist and encourage and originate the idea of encouraging its organization?

A. Because we were asked to do so by our long-time customer, Allied Stores, Bon Marche.

Q. Wouldn't it be in the interests of the bank to acquire that bank as a branch?

A. If it were possible to acquire the bank as a branch, it certainly would. That has been one of the ways we have grown.

Q. It was the long-term intention of the bank to establish a branch in Columbia Center, wasn't it?

A. No.

Q. It wasn't?

A. No.

MR. TORRE: We will recess for about 15 minutes.

(Short recess taken.)

Q. (By Mr. Torre) Mr. Price, do you want to reconsider the answers to any of the questions you have given to me so far with regard to the intention of the bank inspiring the organization of the Columbia Center National Bank?

A. I don't believe so. I don't—

Q. You still maintain it was not your intention at the time of organizing that bank to acquire that bank as a branch?

A. That's correct.

Q. Is it fair to say that you hoped to acquire that bank at a future time?

A. That would be fair, yes.

Q. How do you differentiate between hope and intent?

A. Intent implied some probability and some reason to expect that we would acquire it, and we had no such

reason to expect that. We would hope, just exactly what it says.

Q. Do you have any reason to expect that that bank could be acquired by anyone else?

A. I would say every reason to expect that it could be sold to anyone.

Q. Could a bank be operated at the site of the Columbia Center National Bank without—could another bank be operated at the present site of the Columbia Center National Bank without the approval of the National Bank of Commerce or the Marine Bancorporation or the King County Building Company?

A. Certainly, yes.

Q. Isn't it true that the King County Building Company, of which you are an officer, entered into a thirty year ground lease with the Realbon Company?

A. I believe that's it, yes.

Q. And will Realbon Company—

A. That's a real estate affiliate of the Bon Marche and a subsidiary of Allied Stores.

Q. The Bon Marche, Allied Stores, and Realbon are customers of the National Bank of Commerce?

A. The Bon Marche is a customer, and Allied Stores is a customer.

Q. Do you have common directors with any of those companies?

A. Well, we had a director in 1953 to '63, Rex Allison, who was a director of ours and an officer of Allied Stores, officer of Bon Marche.

Q. Is Mr. James Walsh a common director?

A. Excuse me, and today James Walsh.

Q. So there is a continuity of common directorship between Walsh and Allison, is that correct?

A. Well, frankly, I don't recall whether there is a gap or not. But there has been a long 40-year relationship with the store, and I think Walsh—there wasn't much of a gap, if there was a gap.

Q. So the Bon Marche is an important customer of the National Bank of Commerce, and you, of course, seek to serve it in the best way possible at its locations, is that right?

A. Yes.

Q. In the ground lease that the King County Building Company entered into with the Realbon Company, isn't it true that it provides that the ground may not be subleased or may not—there may not be another bank on that ground without approval of the King County Building Company or on the entire shopping center for that matter?

A. No. The answer to the second part of your question is no, and to the first part, I really don't recall because we owned the building. We might have had some rights to participate in that, but I frankly don't recall. But I am sure as it relates to the whole center, we had no such right, or—as far as I know, I can't believe there was anything that would put in such a restriction.

Q. So there is no provision in there that gives a subsidiary of the Marine Bancorporation a veto over the establishment of the bank on the site of the Columbia Center National Bank?

A. I just don't know.

Q. You don't know. Were you an officer of the King County Building Company?

A. Yes.

Q. Were you an officer at the time that it entered into this ground lease?

A. Yes.

Q. You don't know?

A. No.

Q. Mr. Price, I am giving you a document that is headed "Minutes, Branch Expansion Committee Meeting, December 7, 1965, 3 p.m.," and it indicates at the top that among others you were present.

(Brief pause.)

Have you read it?

A. I read the pertinent part. Do you want me to refer to the second page about Columbia Center?

Q. I direct your attention to the part on Page 2 of the document that is headed "Columbia Center".

A. Yes, I have read it.

Q. Were you chairman of this committee at the time this document was made?

A. I think I was chairman of the committee although it doesn't indicate that.

Q. Is that your signature on the second page of the document?

A. Yes.

Q. So is this a true and an authentic copy of the document?

A. I am sure it is.

Q. And the statements contained therein, are they true also?

A. To the best of my knowledge.

Q. And you recorded these statements for the record?

A. No, I don't believe I recorded them.

Q. But you subscribed to them?

A. I subscribed to them.

Q. Is it a statement that, "The Committee strongly favors a branch at Columbia Center, and Mr. Stowell will pursue with Mr. Allison and Mr. Sherwood the manner in which the location will be established"?

A. Yes.

Q. Did the Branching Committee know at this time it could not establish a de novo branch at Columbia Center?

A. This was—as I recall, this was quite early in the discussions about the proposed center. I think it was four years before it was started, and there was lots of discussion about whether it would be annexed to one city or another or stay in the county or maybe form a new city.

Q. But at that time you could not legally establish a de novo branch in Columbia Center?

A. We knew that.

Q. But you still intended to try to establish a branch there?

A. If it were to be incorporated and we could, we would.

MR. TORRE: We will identify that document for the record as Price Exhibit No. 2.

(Price Deposition Exhibit No. 2 marked for identification by the reporter.)

Q. (By Mr. Torre) I show you another document, Mr. Price, which will be referred to in the record as Price Exhibit No. 3, and I direct your attention to the paragraph headed, "Columbia Center," and the heading states, "Minutes, Branch Expansion Committee, November 9, 1965, 2 p.m.," and it indicates again that you were present. Would you please examine the document?

(Price Deposition Exhibit No. 3 marked for identification by the reporter.)

(Brief pause.)

Q. Is that document a true and accurate copy of the minutes of that meeting?

A. Yes.

Q. Were you the chairman of the meeting at that time?

A. I don't remember whether I was, but I think this was during the period I was chairman, I presume.

Q. Since you were chairman on December 17, it's likely you would be chairman on November 9? Price No. 2 was December 17, which was approximately six weeks later.

A. I think so, yes.

Q. Do you agree with the statement that the committee "—discussed the possibility of an office in this Tri-City location again. The suggestion was made that we attempt to obtain the help of a California bank in financing stock purchase in a new bank by some of our friends so that we might control any bank established with our blessing in the center"?

A. Frankly, I don't remember that language, and yet it was there, so I will say that the thought was expressed in the meeting by someone.

Q. Is it true that thought was expressed and it represented the intent of the Branching Committee?

A. I think the Branching Committee was still exploring the ways that it might be possible to branch either through the separate incorporation of the city, such as —so that we could legally go into it, and this was just a follow-up on that.

To my knowledge, the language is language that we had never used before, and I just don't know what the meaning of that was.

Q. But the language was used, isn't that true?

A. The language must have been used, yes.

Q. Do you have any idea what "help of a California bank in financing stock purchase" intended?

A. I really don't, I don't have any recollection of anyone saying that. I wouldn't have said it. I was surprised when that was in the—

Q. Does the Branching Committee consider frivolous matters?

A. I hope not.

Q. So this was not a frivolous matter?

A. We were concerned about Columbia Center. I am not saying that it was frivolous, I am saying that I don't recall that language, and I don't even recall that reference there. There were no people involved in it, was still early in the discussions about the development, and it couldn't have been specific.

Q. Could it be interpreted that you were intending at this time to organize a bank with some friends and arrange for loans for these friends in order that you may have a hold on these friends to eventually acquire the bank?

A. It sounds like that, doesn't it? I think we were exploring all kinds of ways prior to the time that we just realized that without question that we couldn't put a branch in, and the way that we might get a branch in the center, and I think that was just part of the whole discussion. I think the subject dropped there.

Q. Mr. Price, I give you now an exhibit that we will refer to in the record as Price Exhibit 4. It is the ground lease entered between the Realbon Corporation and the King County Building Company on the 11th day of September, 1968. It was signed by the King County Building Company by President Andrew Price, Jr., President.

I direct your attention to Section 29 on Page 11 of the lease, and I ask you also to examine the entire lease.

(Price Deposition Exhibit No. 4 marked for identification by the reporter.)

A. Well, that would be hard to do.

Q. If you would just do it to assure yourself that it is an authentic copy of the lease and that it is your signature that appears on the final page.

A. Yes. I have done as you requested.

Q. Will you please read Section 29?

A. Yes, I have.

Q. For the record, aloud, please.

A. "Bank Exclusive. Landlord shall not rent any space in the shopping center for use as a commercial bank. This shall not exclude use of space for a mutual savings bank or a savings and loan association."

Q. Is that a true and authentic copy of the lease signed by you?

A. It looks like it.

Q. Yes or no?

A. Yes, to the best of my knowledge.

Q. And it was signed by you in your capacity as president?

A. Yes.

Q. And it was signed in order to provide a site for the Columbia Center National Bank?

A. Yes.

Q. What is the term of the lease?

A. You said 30 years, 1999, July 31, commenced four years ago this month.

Q. Therefore, the 29th section of the lease prevented the landlord from renting any space in Columbia Center Shopping Center to any other bank until 1999?

A. That's correct, that's what this indicates. It's my understanding that that provision is no longer—it can no longer be included in a lease, such a restriction, and I thought it had been determined before 1968. But this was four years ago, and I frankly—

Q. It's your understanding that at the present time such a provision is illegal?

A. Yes.

Q. But at that time you believed it to be legal, is that right?

A. I think so.
Q. Is it still in the lease today?
A. As far as I know.
Q. The lease has not been amended, has it?
A. No.
Q. And who drafted this lease?
A. I don't know whether the lease has been amended. I think I can make an effort to determine that, but I don't know.
Q. To your knowledge, has the lease been amended?
A. To my knowledge at the moment, it has not been.
Q. In your examination of the memoranda filed that gives the chronology of the history of the Columbia Center, was there any indication that the grounds lease was amended?
A. No.
Q. And who drafted this lease?
A. I think this was drafted by—I don't know whether it was drafted by attorneys or Realbon.
MR. MOEN: Off the record.

(Discussion off the record.)

THE WITNESS: The lease was negotiated by Mr. Erickson, who was an officer of King County Building Company.
Q. Did you authorize him to negotiate those?
A. Yes.
Q. And who told you that this provision was illegal?
A. I think our attorneys subsequent to this. I don't think it was illegal at this time.
Q. It has not been ruled by any court to be illegal, this provision?
A. I am not a lawyer and I don't know. In this lease?
Q. Yes.
A. No.
Q. The King County Building Company and Realbon haven't been in litigation?
A. No.
Q. To adjudicate the legality of Section 29?
A. No.

Q. Therefore, it's a valid covenant between those two parties at this time?

A. I would have to refer to counsel, I don't know.

Q. Therefore, this provision effectively gives the King County Building Company exclusive right to banking in Columbia Center, isn't that right?

A. I don't think it does.

Q. Aside from your believed illegality, does it? Assume that it is not illegal at this time—

A. What is it you want?

Q. At the time that Section 29 was drafted and agreed to and executed, it was your intent to exclude any other commercial bank from the Columbia Center Shopping Center, is that right?

A. Yes.

Q. Therefore, over the next 30 years of this lease, if the Columbia Center National Bank chose to be acquired by or merged with a bank other than the National Bank of Commerce, that bank would have to be moved elsewhere, isn't that correct?

A. I don't think so, and on reading this, it doesn't even look like it is well drafted. It says, "The landlord shall not rent—".

Q. That isn't answering the question, Mr. Price. The question is that no other bank could effectively acquire the Columbia Center National Bank, isn't that right?

A. No, I don't read it that way.

Q. No other bank could rent space in the Columbia Center?

A. Than who?

Q. Than anyone approved by you.

A. Where does it say that?

Q. It says that the landlord cannot rent space to anyone else. Have you stopped the landlord from renting space to any other bank?

MR. MOEN: Just a minute, Counsel, I think the lease speaks for itself.

MR. TORRE: We are trying to get to the intent of this.

MR. MOEN: He answered your question three or four times.

MR. TORRE: I don't think he has, Mr. Moen.

MR. MOEN: Okay.

MR. HARTMAN: Why don't you ask him what his intent was?

THE WITNESS: It says that the Realbon Corporation is the landlord.

Q. (By Mr. Torre) The first sentence in Section 29 says, "The landlord shall not rent space in the shopping center for use as a commercial bank." Do you agree that prevents the landlord from renting space aside from the leased space to another commercial bank, to any commercial bank?

A. Yes, that is certainly clear to me.

Q. Would the King County Building Company—strike that.

Therefore, effectively the King County Building Company, which is a subsidiary of the Marine Bancorporation, which is a co-subsidiary of the National Bank of Commerce, and you were a common officer of both at that time or director of one and officer of another?

A. Yes.

Q. You had exclusive use of that Columbia Center for 30 years as a bank?

A. King County Building Company had exclusive use of this particular site.

Q. That's right. In view of the desire and intention of the National Bank of Commerce to establish a branch location in Columbia Center to please its important customer and to serve it, it is not likely that it would permit another bank to be located there, is it, other than the Columbia Center National Bank?

A. Well, I would like to just object to the language that you used.

Q. That is the function of counsel, Mr. Price.

THE WITNESS: Counsel?

MR. MOEN: I will object to the form of the question. Would you restate it?

MR. TORRE: Would you reread the question?

(Last question read by the reporter.)

Q. (By Mr. Torre) Is that true or untrue?

MR. MOEN: Go ahead, if you can answer the question, answer it, then go ahead and explain your answer.

THE WITNESS: Go back.

MR. TORRE: Answer the question, true or untrue. Read the question again.

(Last question read by the reporter.)

THE WITNESS: Is the question clear to Counsel? I am not sure.

MR. MOEN: Is it clear to you?

THE WITNESS: No, it is not clear to me.

Q. (By Mr. Torre) Why isn't it clear to you?

A. It sounds like it's about three questions, and I just frankly don't feel—if you will ask the questions one at a time, I will try to answer them.

Q. (By Mr. Torre) Okay. You testified earlier it was a long term desire of your bank to be situated in the Columbia Center?

A. Yes.

Q. You said that that desire was also prompted by the Allied Stores, Bon Marche, a customer of the bank?

A. Yes.

Q. Which also had common directors of the bank?

A. Yes.

Q. You also testified that the Branch Committee considered establishing—perhaps at least considered establishing a bank through some nominees or friends of th bank at that location in controlling that bank? You testified that was possible?

A. I don't think I testified that.

Q. Mr. Price, I will give you Price Exhibit No. 3 to examine again. Have you read that part again?

A. Yes.

Q. And did you not state earlier it was possible that the committee considered establishing a unit bank?

A. Yes.

Q. Through friends or nominees for the purpose of eventually acquiring that bank?

A. No. In 1965, the date of those minutes—well, before the establishment of the shopping center and the

very early stages, we wanted to explore every way that we might properly get a branch in the center if one were to be established.

Q. I direct your attention to the language, it says we might control any bank established with our blessing in the center. Does that indicate the possibility of desire or intent of controlling a bank that would be located in that site that you would help organize?

A. Not that we would encourage to be formed there because we couldn't. But if we could be there in some other way, we would like to be, and if someone with our encouragement started a bank, we would like to help him get it started in the center.

Q. You would like to control that bank so that you—

A. We would like to be.

Q. To acquire the branch because you would like to be there, yes or no?

A. No.

Q. You don't want to be there?

A. We do want to be there.

Q. How can you be there?

A. If we can legally acquire a unit bank that is there, as a separately incorporated community and we can create a bank de novo, I think those are the only two ways we can be there.

Q. Have you tried to incorporate the area independently? Have you made any efforts to seek to have it—to have the area incorporated independently?

A. We talked to the principals of Realbon and Allied Stores so that they would be aware of what the state law was in that respect, and that was the extent of our discussion of it because there were many other aspects of the matter that affected their plans, and the bank was just one small part of their plans.

Q. Isn't it true that Columbia Center is now within the city limits of the City of Kennewick?

A. I know it is.

Q. So that the prospect of independently incorporating the Columbia Center is effectively foreclosed if it is within the city limits of Kennewick?

A. Maybe three years after this that happened, yes.

Q. Independent incorporation of the area aside, doesn't this statement indicate that if the area were not independently incorporated, you would want to control any bank established in that area?

A. In 1965 we expressed the hope that we might.

Q. Did you ever change that hope at any time after that? Did the committee ever express any change of that desire?

A. No, it wasn't pursued.

Q. To this day isn't the Bon Marche Company still there at Columbia Center?

A. Yes.

Q. And do they still desire that the National Bank of Commerce be there?

A. I don't know. I think—I have heard no expression from any of them.

Q. Have you heard any change in their initial expression of desire to have you located there?

A. No.

Q. So that as far as you know, they still want the National Bank of Commerce to be on that site?

A. We told them we couldn't be there and encouraged the formation of the bank that is there, and they have expressed no dissatisfaction.

Q. Why were they satisfied with a small, newly-created bank? Could this small, newly-created bank offer them the same services that the National Bank of Commerce could offer them in that site?

A. No.

Q. Isn't it true that you assured them that you would stand behind that bank?

A. I think we said we would give it all the support that we could. I am sure that we said that.

Q. So you in effect gave the bank your blessing?

A. Yes.

Q. As stated in this document?

A. Yes. Well, I don't know that it does state it in that 1965 document because it wasn't there. I mean the bank is four years from formation.

Q. Well, the language in the document is in the subjunctive, it said, "We might control any bank established

with our blessing." And was the Columbia Center National Bank established with your blessing?

A. Yes.

Q. Doesn't Section 29 of the lease give you control over that site for 30 years?

A. It appears to, it says it does in the lease if the lease is still—if that is an enforceable clause. I read it the same way you do.

Q. Therefore, you do agree that you can effectively exclude any other bank from that site for 30 years?

A. That's not what I said.

Q. You said you agreed with me, how do you agree with me?

A. If that is an enforceable clause, then that's what it gives—it indicates that Realbon will not grant any space in the shopping center for use as a commercial bank.

Q. That is in the shopping center outside the leased ground?

A. That's correct.

Q. Now, the lease on the ground is held for 30 years by the King County Building Company, is that correct?

A. Yes.

Q. And Columbia Center National Bank Building rests on that land, is that correct?

A. Yes.

Q. Would you as Chairman of the Board of the National Bank of Commerce and a member of the Board of Directors also of Marine Bancorporation permit that?

A. Yes.

Q. Would you permit the King County Building Company to lease that space to another commercial bank other than the Columbia Center National Bank?

A. I don't think—yes.

Q. You would permit the Seattle First National Bank to open a branch on that site?

A. Do you mean to be a successor to Columbia Center National Bank?

Q. That's right.

A. Yes.

Q. Isn't that rather foolish?

A. I am not sure why.

Q. Is it likely, Mr. Price, that you would permit the Seattle First National Bank to establish a branch on that site by acquiring the Columbia Center National Bank?

A. The National Bank of Commerce is is the answer to your question.

Q. Is it likely—I asked you whether it was likely that you would permit any other bank to acquire that, to establish a branch on that site?

A. Yes, if they acquire the Columbia Center National Bank.

Q. At the time the lease was executed, did you have the ability to prevent any other bank from going on that site until 1999?

A. Well, I don't think that we did.

Q. You are the ground lessee, how could another bank go in there without your permission?

A. The Comptroller authorizes the bank to be sold to some other bank.

Q. But then you would have to sub-lease the ground space to that bank?

A. It would be painful.

Q. But the Comptroller couldn't force you to sub-lease it, could he?

A. I don't believe we could stand in the way of the transfer of the bank.

Q. Under—what provision of the law would require you to lease your space to someone else, to derogate your property right?

A. I can't answer that.

Q. There is none, is there, Mr. Price?

A. I don't know.

Q. And isn't it true that you effectively had the power to exclude any other bank from that site for 30 years?

A. I never felt so.

Q. Is it or is it not true that you have the power?

A. No.

Q. Do you want to consult with your Counsel to answer that question?

MR. MOEN: No, I think he is answering it fine.

MR. TORRE: I think for the record the witness is being very evasive in answering this question and that he ought to consider the effect of Rule 37 in this case and that he have—

MR. MOEN: Counsel, you are asking him to testify to conclusions, and if you are not getting the answers you want, we can't help that.

MR. TORRE: The question is, Counselor, could the bank, when this lease was entered, prevent another bank from being located on that site for the next 30 years.

MR. MOEN: He says he doesn't know. The lease speaks for itself so far as the clause you are talking about is concerned, and it isn't up to him to construe it. You can construe it any way you see fit, you can argue any way you see fit, but you can't expect this man necessarily to agree with your conclusions.

MR. TORRE: He executed the lease, he was the officer of the company that executed the lease.

MR. MOEN: Don't argue with me, go ahead ask the questions.

(Price Deposition Exhibit No. 4 marked for identification by the reporter.)

Q. (By Mr. Torre) Mr. Price, I will give you now Price Exhibit No. 5, it is a sub-lease executed the 11th day of September, 1968 by and between King County Building Company and the Columbia Center National Bank. Would you examine that document, please?

(Price Deposition Exhibit No. 5 marked for identification by the reporter.)

(Brief pause.)

A. Yes, I have examined it.

Q. Have you examined the document, Mr. Price?

A. Yes.

Q. Is it a true and authentic copy of the sub-lease executed by the King County Building Company?

A. It appears to be.

Q. And the lease is for a period of five years, is that correct?

A. Yes.

Q. Renewable for another period of five years?

A. Yes.

Q. Does Page 1 of the lease at the bottom indicate the initial period of the lease is for five years?

A. Yes.

Q. Does Page 12 of the lease indicate that it is renewable for another period of five years?

A. Yes.

Q. Is there any provision in the lease, to your knowledge, that would permit the Columbia Center National Bank to extend the lease beyond the second five year renewable period?

A. I would have to read it. I am not—I don't recall if that is in there or not.

Q. Take your time and peruse the document.

MR. MOEN: Here again, the document speaks for itself. Why don't you point out the paragraph that you have reference to?

MR. TORRE: I don't have any reference.

MR. MOEN: You are asking this man about documents that were negotiated four, eight and ten years ago, and you expect him to remember all these things. Either it is in the document or it isn't. If it's there, ask him about it.

MR. TORRE: If I asked him, he would say he doesn't remember because he doesn't know. I asked him if it was in there, and he said he doesn't know. If I would ask him a leading question along that line—

MR. MOEN: Why don't you point out the paragraph that you have reference to and get done with it?

MR. TORRE: There is no paragraph to my knowledge that is in that lease permitting it to go beyond the ten-year period, five and five, so I can't point anything out to him to my knowledge.

Off the record.

(Discussion off the record.)

Q. (By Mr. Torre) Mr. Price, I show you now a letter addressed to Mr. Dean Loney by Mr. Robert S. Buck, Senior Vice-President of the National Bank of

Commerce, dated December 29, 1967; would you please read that?

(Price Deposition Exhibit No. 6 marked for identification by the reporter.)

(Brief pause.)

A. Yes.

Q. Mr. Buck in his deposition has testified that this is a true and accurate copy of a letter, do you recognize the letter?

A. Yes.

Q. Have you seen the letter before?

A. I think I had seen it in preparing for this meeting.

MR. HARTMAN: He had seen it in preparing for the deposition, is that your answer?

THE WITNESS: Yes. Excuse me, I probably had seen it before, but I recall seeing it in preparation for this.

Q. (By Mr. Torre) For the deposition. Did you see it at the time it was written?

A. Are my initials on it?

Q. They are not on this copy, no.

A. It is customary to initial them, so I don't—if they are not there, I may not have seen it at the time.

I see nothing in the letter I would have objected to other than his choice of words over mine in a place or two. But basically the letter is one I would not have objected to.

Q. So you agree with the statement that says, "The majority stock of the bank will be in hands friendly to the National Bank of Commerce."

A. Yes.

Q. What does that mean in your opinion and understanding?

A. I think generally—

MR. HARTMAN: Are you asking what Mr. Buck meant?

MR. TORRE: What he understands by it.

MR. HARTMAN: He hasn't said that he does.

MR. TORRE: He is answering the question, Jon.

MR. HARTMAN: I want to know what the question is.

Q. (By Mr. Torre) Mr. Price, to restate the question, what do you understand by the statement that "the majority stock will be in hands friendly to the National Bank of Commerce in order to insure as much as possible its future as a branch of that bank yet avoid certain legal problems which could arise if it were not to agree or contract with respect to its acquisition"?

MR. MOEN: Now, what's your question?

THE WITNESS: What's your question?

Q. (By Mr. Torre) Do you agree with that statement? What does it mean to you?

MR. MOEN: Two questions, do you agree with the statement?

THE WITNESS: As I understand it, I agree with the statement that we would like to find friends of the National Bank of Commerce who would have an interest in owning the shares of the bank.

Q. Was Mr. Buck correct when he made this statement?

A. To the extent I have just expressed it to you, I think he was.

Q. Doesn't the language that states that "the stock will be in hands friendly to the National Bank of Commerce" express an intention to put it in such hands?

A. A desire to be in the Center.

Q. No, I am talking about the stock, not the location of the bank, I am talking about the stock. It says, "The stock will be in hands friendly to the National Bank of Commerce." Do you agree with that language that it exhibits intent to place it in such hands?

A. It wasn't our option. He was expressing to the Comptroller's office that the stock as well as it could be would be in hands that were friendly to the National Bank of Commerce.

Q. You said he was expressing this to the Comptroller?

A. Is that to whom he was writing?

Q. Well, Mr. Buck testified that a copy of this letter was sent to the Comptroller.

A. Yes.

Q. Do you understand that to be true?

A. I didn't understand it. I thought that was to whom it was addressed.

Q. This letter is addressed to Mr. Dean Loney. But Mr. Buck testified that it was sent to the Comptroller of the Currency's regional representative.

A. Yes.

Q. What do you understand by the language "to avoid legal problems which would arise or which could arise if it were not to agree or contract with respect to its acquisition"?

A. That's lawyers' language and I don't know.

Q. Was Mr. Buck a lawyer?

A. I don't know what Mr. Buck's background—he is a lawyer.

Q. He is a lawyer?

A. He was a lawyer, he's a banker now.

Q. He writes in the capacity as counsel for the bank?

A. No.

Q. He wrote this as a bank officer?

A. Bank officer.

Q. What do you think he understood that to mean as a bank officer?

A. I understand that there can be no such ties, that you can't contract with anyone to start a bank and sell it to you, it's against the State of Washington laws, and I believe it's against the federal laws, and that must be the matter to which he has reference.

Q. Do you know what laws—federal laws have been violated and what state laws have been violated?

A. I would have to refer to Counsel on that. I believe there is a state law, I know there are state laws, I believe there are federal laws.

MR. TORRE: Would Counsel care to note for the record what laws those are?

MR. MOEN: No, I will not.

MR. TORRE: That it would violate?

MR. MOEN: No.

MR. TORRE: Does Counsel know what laws it would violate?

MR. MOEN: You are taking his deposition, not mine.

Q. (By Mr. Torre) You refuse to say whether you know or don't know?

A. (No response.)

Q. The second paragraph says that, "It is true, nevertheless, that our bank has inspired submission of the application and is hopeful that at an appropriate future time it will be possible to acquire the bank for incorporation within its branch system." Is that an accurate statement of fact by Mr. Buck in this letter?

A. Yes, I think it is. I am sure it is.

Q. Are you in agreement with that statement?

A. Yes.

Q. In fact, then you are saying you did everything you could except formally agree with the Columbia Center National Bank to acquire it?

A. I am repeating, but we did everything we could to encourage the formation of the bank and to insure that it would be a good correspondent of the National Bank of Commerce.

Q. Did you do everything else that you could to insure that you could acquire it at a future time that was legal in your mind at the time?

A. I don't think there was anything that we could do that would assure us of its acquisition.

Q. Did you seek to go as far as you could within permissible legal grounds to insure that you could acquire this bank at a future time?

A. I don't believe I am being evasive.

Q. I want a yes or no answer first.

A. I don't believe we went any way to assure that because we could not take any steps to assure that we could acquire it at some future time. We had a hope that we could acquire it at some future time; we encouraged the formation of the bank.

MR. MOEN: Is that the same as Buck Exhibit No. 1?

MR. TORRE: Yes.

Q. (By Mr. Torre) We will refer to this document as Price Exhibit 7; it is a letter to Mr. Robert Buck from Mr. Dean Loney, dated July 12, 1968. Would you please examine that?

A. I don't think this was among the material you asked me to read earlier?

Q. No, it was not among the documents you were asked to read before the deposition.

(Brief pause.)

(Price Deposition Exhibit No. 7 marked for identification by the reporter.)

Q. Mr. Price, do you recognize the marginal notations as being your handwriting?

A. I have never seen this document or the marginal notations.

Q. Is this or is this not your writing in the margin?

A. It's not my writing.

Q. Do you recognize the writing as being that of any other officer of the Bank?

A. No, I don't.

Q. Mr. Price, I direct your attention to Paragraph No. 3 of that letter.

A. Yes.

Q. Doesn't that indicate that Mr. Loney had the understanding that Columbia Center National Bank would become a branch of the National Bank of Commerce?

A. If that was his intention.

Q. Doesn't the language indicate that was his understanding?

A. It states it may become a branch of the bank, and maybe Mr. Loney thought it would become a branch of the National Bank of Commerce, or he may have hoped that it would become a branch of the National Bank of Commerce. Is that an answer to the question?

Q. Mr. Price, the first sentence that says, "We need a clear definition and understanding of the management responsibilities as between the directors of the unit bank and management of the National Bank of Commerce." Why did Mr. Loney feel there was a need of a clear understanding of the management responsibilities?

A. He wrote the letter and I didn't, so I am interpreting that.

Q. Why do you feel he would?

A. Mr. Loney had never been a bank chairman before, bank officer before. He had been counsel to our office

in Kennewick, and he didn't know the relation that exists between a bank and its major corrspondent, and I think he was simply trying to clarify. He uses words "management responsibility", but I think he was really trying to clarify what would be the relationship between this unit bank and its city correspondent principals.

Q. Mr. Loney is a lawyer, is that not correct?

A. Yes.

Q. Does the first sentence indicate there may be some intermixing of management responsibilities between officers of the National Bank of Commerce and officers of the Columbia Center National Bank?

A. I think—no, it indicates to me he would like to define what the relationship is. He needs a clear definition.

Q. Of responsibilities?

A. Of responsibilities.

Q. That would mean that there are responsibilities that are scattered between the two?

A. Well, in his language, yes.

Q. Doesn't the language indicate that you have to define something, that there is a gray area where the two overlap?

A. Yes. I shouldn't try to interpret his language. What he says is that there needs to be a clear definition of the management responsibilities.

Q. And the next sentence says in part that, "Many of the steps taken initially will have a bearing on the long range operation of the bank many years after it has changed from a unit bank to a branch bank."

Is there any possibility they could be referring to any other bank other than the National Bank of Commerce when they talk about branch bank?

A. He is talking about the National Bank of Commerce in the first part of the paragraph, and it sounds to me like he is carrying right over into the second part of the paragraph.

Q. So he had reason to believe that it was going to change from a unit bank to a branch bank?

A. I don't think he had reason to believe that it was going to change. He is trying to be prepared in the event that it does.

Q. He is making a plea here for some sort of a managerial and operational continuity, is that true?

A. I don't think he is, no. I don't think he is doing that.

Q. As of July 12, Mr. Price, 1968, how long had you and Mr. Buck been dealing with Mr. Loney?

A. I think about a year, it's December of '67, I imagine sometime before that.

Q. And you testified that it was in offices of the National Bank of Commerce that he initially contacted Mr. Loney and asked him to be an organizer of the Columbia Center National Bank?

A. We encouraged him, yes, to take that role.

Q. Would it be possible that Mr. Loney got the impression that from the conversations that he had with you over the year prior to this letter that the Columbia Center National Bank would become a branch of the National Bank of Commerce?

A. He knew we would like it to be a branch of the National Bank of Commerce, sure.

Q. Did he show any reluctance to that idea?

A. None.

Q. So this was a mutuality of desires there?

A. I never—I know what our desire was.

Q. And you knew he had no contrary desire?

A. And he had no contrary desire as far as I know.

Q. So there was a meeting of the minds?

A. To that extent, sure.

Q. Would you call that an agreement or understanding?

A. Yes, I would have to say it was an understanding, sure, there is no agreement.

Q. Mr. Price, I will address your attention to Price Exhibit No. 1-3, which is dated 5-23-66 in the upper left-hand corner?

A. Yes.

Q. Would you please read the second paragraph to yourself?

(Brief pause.)

A. Yes, I have read it.

Q. The Mr. Beavers referred to in the first sentence is an officer of the—or was an officer at that time of the National Bank of Commerce?

A. Yes.

Q. Would you clarify that first sentence completely? You said, "I first told Mr. Beavers that one of the organizations affiliated with the bank we hope to own 24 percent of the stock of the new bank."

A. Yes, I think there have been words left out. I think that should read, "I first told Mr. Beavers that as one of the organizations affiliated." I believe that "as" was left out.

Q. So what organization is that you are referring to here?

A. This would have to be Marine Bancorporation, the parent company of the bank.

Q. Why did you want to own 24 percent of the new bank stock?

A. We still were hopeful of having a branch in the Center, and we thought that at one time we might own 24 percent of the stock of the bank.

Q. The second sentence states that you indicated the capital would probably be $400,000, is that correct, and "that we would hope people friendly to the NB of C might wish to own another 25 percent of the new bank's stock."

A. Yes.

Q. Wouldn't the 24 percent held by Marine and the 25 percent held by the people friendly to the NB of C give NB of C effective control over the new bank?

A. I don't think so. I understand that effective control is considered to be a higher figure than 24 percent, and the fact that 25 was in the hands of people friendly to the bank, we might—we couldn't dictate their vote.

Q. But if they were friendly to the bank, they would follow the bank's wishes, is that correct?

A. No.

Q. Then they wouldn't be friendly to the bank, would they?

A. Well, I think they would be when they bought the stock or hoped they would be when they bought the stock, but there is no saying after that.

Q. You have no assurances?

A. No assurances after that, no.

Q. But would it be likely they would turn on the bank if they were friends of the bank?

A. I hope not.

Q. Why would you want 25 percent to be in friendly hands?

A. We had hoped some day that we could branch, have a branch in the Columbia Center Shopping Center, and we hoped some day that we might be able to buy the Columbia Center National Bank. We had hoped that these people might continue to be friendly to the bank and that we might be able to buy it therefore.

Q. So this is a step that you intended to take to control the direction of the bank as much as possible?

A. With that qualification, sure.

Q. Why would you limit the Marine Bank's share of the stock to 24 percent?

A. As an investment, that's all we could own under the laws of this state.

Q. Did Marine Bank in fact ever obtain or acquire 24 percent?

A. No, never acquired any.

Q. Was that because of the Federal Reserve regulations?

A. I think it was the advice of counsel, and I believe it was the advice of counsel.

Q. Did it relate, to your recollection, to the Federal Reserve disclosure requirements in one-bank holding company regulation?

A. Can I consult with you off the record?

MR. MOEN: Off the record.

(Discussion off the record.)

Q. (By Mr. Torre) Bringing your attention to the last sentence of that paragraph, it says, "Mr. Beavers

said he did not think there would be any difficulty in getting local people to subscribe—" to approximately $250,000 of remaining stock, "—and he said he felt local people could do this without the necessity of using borrowed funds to purchase the stock."

Why would he feel—or what did he indicate to you that made him feel that there would be any difficulty in selling the stock to the local people?

A. I don't remember exactly what he said beyond what is indicated here. I know that the Comptroller wanted strong substantial people who wouldn't have to pledge their stock to become identified with any such new unit bank, and he thought there were such people in the Tri-City area, Kennewick area.

Q. Why would these people in the Kennewick area, in your opinion, be willing to speculate on the stock of an independent bank, a new independent bank in the area?

A. If all of this has been submitted in evidence, I think there is—or in the deposition, I think reference is made to this somewhere else in the material.

Q. I believe it is. We will get to that later.

A. Okay.

Q. What do you generally refer to, without seeking it out at this time in this exhibit, that would indicate the attractiveness of such stock?

A. I believe the recitation that is here and in the balance of the material as to what other banks had been sold for, unit banks had been sold for over a period of quite a number of years.

Q. The people would have to have an indication that the bank would be sold to someone?

A. That's one reason why it would be interesting. The other reason is that our study, which is also referred to in here, indicates the Center itself will be the center of a regional shopping center of Southeastern Washington.

Q. Going on now, for the record, Mr. Price, to 1-6, dated 9-8-66 headed "Columbia Center", I direct your attention to the second paragraph, which is underscored. Could you read that, please?

(Brief pause.)

A. Yes.

Q. You indicated to Mr. Allison therefore, at this time that you had an interest in establishing the bank, and Mr. Allison suggested that you develop an independent bank on the site and they would insure that the Columbia Center would be developed as a shopping center, is that correct?

A. I think—I can't say it any better than I have said it here.

Q. What does he mean—what do you mean when you wrote here that you wanted a bank in which NB of C was interested?

A. I just think on this, a unit—independent unit bank that had support of NB of C, that's all. He previously said, and I think we have related here, that we were invited into the Center and told them we couldn't go into the Center and that he would like a bank that had our correspondent bank backing.

Q. Going on now to 1-8, which is dated 2-10-67, the page is labeled "Continued", I want to read you the second part on 2-10-67, and also read 2-15-67 and also read 3-7-67.

(Brief pause.)

A. Yes, I have read them.

Q. The 2-10-67 entry says that again you referred to a number of good friends of NB of C who are customers of branch offices in the area. Again, was this an effort to insure that you could acquire the bank at a future time?

A. The same effort, we had hoped to acquire the bank at some time, but I don't think with any assurance that we could did we approach these people.

Q. Doesn't this indicate your continued cooperation or urging of Mr. Beavers to seek out friendly investors?

A. Sure.

Q. And did Mr. Beavers follow your direction?

A. May I correct that, he didn't seek out, he was suggesting names to us. There was never any—

Q. Did you ask him to suggest names to you?

A. Yes.

Q. 2-15-67, it shows—who was Kenneth Clark?

A. Mr. Clark is Vice-President and Cashier of the National Bank of Commerce.

Q. Was he an officer of the National Bank of Commerce at the time?

A. He held that title then, yes.

Q. And you directed him to get the application prepared for the Columbia Center National Bank?

A. No, I just asked that he get whatever papers were necessary to prepare an application.

Q. Had you met Mr. Loney at that time?

A. I don't remember.

Q. Would you peruse the documents before this one, the ones going back to see if his name appears prior to that?

To save time, I will direct your attention to March 30, which is a later date in time than the one we are referring to.

A. March 7?

Q. March 30, 1967. Would you agree that is Mr. Loney's first appearance in your chronology of events contained in this document?

A. Yes.

Q. Therefore, Mr. Clark was acting solely for the National Bank of Commerce in getting the necessary papers together to organize the national bank, is that correct?

A. I think that's right.

Q. There was no Mr. Loney around at that time or other organizers?

A. That appears to be the first time that Mr. Loney's name comes up, and Mr. Clark was asked to do this because of the urging of the Allied Stores people to find some way to get a bank in the Columbia Center Shopping Center.

Q. Well, doesn't your direction to him indicate that you also wanted to get a bank in Columbia Center Shopping Center?

A. To the extent I have mentioned before, sure.

Q. So you directed Mr. Clark to gather papers to do so because you wanted to also, is that right?

A. There was no opportunity for us to submit an application, and that previous discussion indicates that we were going to try to encourage someone to do it. We talked with Mr. Beavers.

Q. Doesn't it indicate—

A. It just says it would be necessary for the submission of an application, it doesn't say by the National Bank of Commerce, and there was no intention by the National Bank of Commerce to do it, and I don't—

Q. Could the National Bank of Commerce itself organize a bank?

A. No.

Q. So, therefore, Mr. Clark was going to gather these papers for another party to use, is that right?

A. Sure.

Q. And Mr. Beavers was out and about the land gathering up prospective investors or organizers?

A. No, he was suggesting names to us of people. He was suggesting names to us of people we might find friendly to the National Bank of Commerce, and it is not my recollection that he ever approached anyone. There was no—

Q. How was he going to find people interested in organizing a bank, were they just going to stand out in the street and people going to walk up to him and volunteer?

A. I think that a banker is supposed to know who some of the people are in the community who have means and resources and are investors and could make such an investment.

Q. Wouldn't he have to approach people, Mr. Price?

A. No. All he was being asked to do, to my knowledge, was to suggest the names of people that he knew, and Rightmire was being asked the same thing, and to my knowledge, nobody had approached anyone at this time.

Q. At this time no one was approached, but they were suggesting names for people to be approached at a future time?

A. Friends of the National Bank of Commerce who might be potential investors in the bank. I believe that's correct.

Q. And Mr. Clark then would submit these papers to these gentlemen for their organization?

A. No, no, Mr. Clark—

MR. TORRE: Mr. Moen, would you let the witness answer the question, please, and stop coaching him?

MR. MOEN: I am not coaching him. I don't think it's fair for you to keep trying to put words in his mouth.

MR. TORRE: I am permitted to ask leading questions, aren't I?

THE WITNESS: I don't feel I need any coaching.

Mr. Clark is also a graduate of law school, and in that—and he had to be in his role as Vice-President and Cashier of the bank in touch with the Comptroller's Department from time to time on many things, and we asked him as a natural, logical one to get papers.

Q. What was he going to do with these papers?

A. He was getting them for me so I could see what was involved in starting a national bank.

Q. What were you going to do with them?

A. We were going to encourage someone to—we were going to try to encourage someone to start a unit bank in the Columbia Center Shopping Center.

Q. At the bottom of the page, the entry of 3-7-67, having established that you haven't met Mr. Loney yet or any other organizer of the bank, you contacted Mr. Leaf before that time, is that correct?

A. Where do you see Mr. Leaf?

Q. 3-7-67, at the bottom, the final paragraph.

A. Yes.

Q. What did you indicate to Mr. Leaf in this conversation?

A. I imagine if this was the first contact with him, I imagine I reviewed some of the background on this and what efforts we had made and what thoughts we had given to encouraging the formation of a bank. I don't know beyond what is here unless it is on the next page continued—no, it's not.

Q. Above that you said you reviewed with Mr. Carlson and Mr. McCord the manner in which you will attempt to form the subject bank, and there are three names men-

tioned there that were discussed as possible organizers. Could you identify those individuals, please?

A. Yes, Walter Funk was a Vice-President of the National Bank of Commerce in charge of Agricultural Lending and Country Branch Loans, retired or approaching retirement.

Mr. Lyle Beavers was Manager of the National Bank of Commerce and Vice-President of the National Bank of Commerce in the Kennewick office, and David Colkett. Mr. Colkett had retired, and he had been the Manager of the Northgate Branch of the National Bank of Commerce.

Q. Mr. McCord is Counsel for the bank?

A. Mr. McCord at that time was a director and senior partner in our law firm.

Q. So thus at this time you hadn't met any potential organizers from outside the bank, you had considered people inside the bank, is that correct?

A. That's correct, people. We hadn't talked to any outside people, and that we considered what experienced banking there might be near retirement in the bank who might be interested in remaining active after their mandatory retirement.

Q. The next page, which is 1-8 of the exhibit—

A. Do you mean 9?

Q. 1-9, I beg your pardon, read the first two paragraphs, please.

(Brief pause.)

A. I have read them.

Q. The second paragraph, "Mr. Leaf interposed no objection to Marine holding 24 percent of the ownership of the new bank that the National Bank of Commerce formed."

A. That's right.

Q. So he said he had no objection about the national bank using its holding company to form a national bank?

A. I don't think you can form anything with 24 percent, but he didn't have any objection to our owning 24 percent as an investment, no.

I think we have been over this, and 24 percent, we later decided on advice that we couldn't own without coming under the Bank Holding Company Act of 1956.

Q. Did Mr. Leaf at this time suggest that there would be anything illegal or improper about your intended project?

A. I would say quite the contrary.

Q. What was his attitude?

A. He indicated a Center such as the one Allied Stores plans to build in conjunction with J. C. Penney Company would certainly be worthy of having a bank in it.

Q. A bank established by the National Bank of Commerce?

A. Yes.

Q. But this is what we are talking about, this is what you were talking to him about, is that correct?

A. Yes.

Q. Mr. Loney or the other organizers were not present, is that correct?

A. I don't think any of them were on the scene yet.

Q. The second sentence of the second paragraph says, "He said the only objection would come from the Kennewick National Bank which is making slow progress in building loans and deposits. It indicated, however, that because of the sponsorship of that bank by the old National Bank of Washington, that this should not be an impediment to the formation of a unit bank in Columbia Center."

It is true that that bank was sponsored by the old National Bank of Washington?

A. That is the language that I used here. I have no knowledge of how it was developed. I think to me that was hearsay, but he should know that it had the strong support of the Old National Bank, and I just think I said he indicated that.

Q. How do you think he was informed by the Old National Bank to this effect?

A. It is a national bank, both are national banks, and I don't know what he meant.

Q. Isn't it true that the old National Bank subsequently acquired the Kennewick National Bank?

A. Yes.

Q. And is now a branch of that bank?

A. Yes, it is.

Q. Go on to the entry dated 3-27-67 on Exhibit 1-10. Directing your attention to the third paragraph, why did you put the term "the agent" in quotes?

A. That was a new word to me, but it was one that the Comptroller uses in the earlier stages of forming a new national bank.

Q. Had the bank or had you selected an agent at that time?

A. I had never heard the expression before.

Q. Was there an agent that fitted—an individual whose name could be substituted in that spot?

A. No, in that sense—

Q. There was no agent at that time?

A. No.

Q. The second paragraph says that, "Mr. Beavers will also develop information on the stockholders of the three banks in the Tri-City area which have been sponsored by the Old National Bank of Washington see if there is a pattern established as to applicant shareholders."

Did you do that because you felt that those three situations were analogous to your situation in Columbia Center?

A. I really can't clarify that paragraph any more than it is.

Q. Did you do that because you felt that the Old National Bank had been successful in branching through sponsoring the creation of the unit bank?

A. No, I don't think they were. I don't really—I don't know what we were after or hoped to develop or why we asked Mr. Beavers.

Q. You must have had some reason to ask Mr. Beavers to spend his time doing that, what was it?

A. My recollection is that Mr. Beavers didn't spend any time and no pattern is referred to in any subsequent memorandum, and I don't think—I say I don't know what pattern we hoped to have.

Q. It says that Mr. Beavers will develop information on the stockholders.

A. It sure does.

Q. It says he was going to do something, is there any indication that he didn't do that?

A. The fact that it's not here I think is sufficient indication.

Q. Do you put everything that you do into these memoranda?

A. They are quite complete.

Q. But they are not all-encompassing and exhaustive, are they?

A. There was no intention in 1967 to not have them complete.

Q. Are there gaps in them?

A. I don't believe so.

Q. Could there be gaps in them?

A. I don't believe so.

Q. Could there be gaps in them?

A. Counsel, what is he trying to prove?

MR. MOEN: I don't know.

A. I have answered the question.

Q. (By Mr. Torre) I asked the question, could there be gaps in them?

A. Sure.

Q. I direct your attention to Exhibit 1-16 which is dated 5-4-67. Under the 5-4-67 notation would you read the second paragraph, Mr. Price, please?

(Brief pause.)

A. Yes, I have read the second paragraph.

Q. Is Mr. Meon referred to there Counsel for the bank present?

A. Yes.

Q. And did he say why he felt that the reports regarding borrowing should not go to the Federal—or must not go to the Federal Reserve Board?

A. I don't remember any more than is here.

Q. What is the reason that you did not want the reports of borrowings to purchase stock to go to the Feds?

A. I was quoting him here and I don't recall.

Q. What reason did he tell you, do you recall that?

A. No. This is over five years ago.

Q. All right. I will direct your attention to the following page, which is 1-17, and the entry of 5-25-67.

(Brief pause.)

A. I have read the top part of that.

Q. Do you understand Mr. Leaf's meaning that he felt under the circumstances that the proposed officers in the bank would be NB of C people or NB of C men?

A. I think he just knew we were encouraging the formation of the bank and that he—

Q. Did he understand you were doing more than encouraging formation of the bank?

A. I don't think he did.

Q. Why would he feel you should have one of your men in there?

A. I suppose he would think it odd for some other person to be there.

Q. Do you think perhaps he thought you wanted to establish a branch there, so why don't you put one of your own officers there?

A. I think anyone—I don't think that was it.

Q. Weren't you seeking to establish a branch there indirectly, Mr. Price?

A. We had hoped to have a branch there eventually. I mentioned that before.

Q. And you were sponsoring the bank there to establish a branch?

A. We were encouraging a formation of a unit bank that we had hoped we might eventually be able to acquire.

Q. And you were doing everything within legal limits to insure that you could acquire that bank?

A. I think so.

Q. And you intended to acquire that bank?

A. We hoped to acquire the bank, and if and when they wanted to sell it, we would—

Q. You already testified you had a meeting of the minds at the bank with the organizers of the bank?

A. I didn't—

MR. MOEN: I don't think he said that, Counsel.

THE WITNESS: I didn't say that.

MR. MOEN: I think he said quite the contrary. You asked him that question, but he testified that there was no meeting of the minds.

MR. TORRE: The record will speak for itself.

MR. MOEN: Yes, it will speak for itself.

Q. (By Mr. Torre) Didn't you testify that Mr. Loney anticipated that the Columbia Center National Bank would become a branch of the National Bank of Commerce?

A. Mr. Loney was counsel to us, he was a friend to us, and I think I said that he would have no objection at its becoming a branch.

Q. Didn't he even say desire in the previous letter you saw that he wrote to Mr. Buck regarding the definition of management responsibilities and the continuity of management operations?

A. I think he was indicating he knew of our desire, and he had no objections to that.

Q. So he knew of your desire to establish a branch, and you knew of his desire that it be established as a branch, is that correct? Yes or no, then explain, please.

A. He knew of our desire to have a bank there if we could have one. He knew that there was no way we could assure its being a National Bank of Commerce branch. He would be one of a number of stockholders without any controlling stock in the bank, and there is no way for him to direct its sale to the National Bank of Commerce if the shareholders decided to sell.

Q. Weren't you of a common mind then with Mr. Loney, who was the chief organizer and who was also the agent for the bank at its formation, that the bank should become a branch at a future time?

A. I think he would at the time.

Q. Were you or were you not of a common mind?

MR. HARTMAN: What do you mean by common mind? I don't understand that.

MR. TORRE: Let the witness answer. It is not necessary that you understand the question, Mr. Hartman.

MR. HARTMAN: I am entitled to understand the question.

THE WITNESS: I will ask the same question.

Q. (By Mr. Torre) Did Mr. Loney want the bank to become a branch of the National Bank of Commerce?

A. No.

Q. You testified that the letter that he wrote to Mr. Buck of July 8—July 12, 1968, he evinced his desire that the Columbia Center National Bank become a branch of the National Bank of Commerce. You testified that you, the National Bank of Commerce, and its officers and directors desired that it would and hoped that it would become a branch. Wouldn't you call that a meeting of the mind? Yes or no, please, and then explain.

MR. MOEN: The witness can't know what was in Mr. Loney's mind. He can testify to what is in his mind.

MR. TORRE: He has testified that Mr. Loney in his letter evinced a desire, so let him answer, please, Mr. Moen.

THE WITNESS: I will answer the same way as Mr. Moen suggests, I don't know what was in his mind. I tried to tell you that Mr. Loney—

Q. (By Mr. Torre) I am not asking you to judge what is in his mind.

A. Yes.

Q. I am asking you what he said.

A. I have told you that.

Q. Don't you judge people's intent from their language?

A. We have discussed that in reference to Mr. Loney's letter.

Q. Returning to Price Exhibit 1-17, 5-25-67 memo, why did Mr. Leaf state that there would be no embarrassment to him if one of our officers became the principal officer of the bank?

MR. HARTMAN: I don't believe he can speak for why Mr. Leaf did anything.

Q. (By Mr. Torre) Did you express to him there might be an embarrassing situation arising if an NB of C officer were to become the principal officer of the bank?

A. I don't remember expressing that thought.

Q. Mr. Leaf assured you that there wouldn't be any embarrassment?

A. He assured us.

Q. Is that correct?

A. Yes.

Q. And is that a true statement?

A. I think so.

Q. Why did he assure you there wouldn't be any embarrassment unless you expressed fears of embarrassment? Did he just volunteer that?

A. I think I will just let this speak—I have told you I tried to be quite complete in what I put down, and I think—

Q. You are refusing to answer that question then, is that right?

A. I cannot elaborate on what I have dictated here five years ago, five and a quarter years ago.

Q. We will be coming closer to the present so your memory will improve, I am sure.

A. My memory is all right.

Q. And you don't remember what happened then?

A. I think this expresses it as well as I remember it.

Q. Well, I am asking you a question about that then, why did he assure you there wouldn't be any embarrassment?

A. Mr. Torre, I cannot elaborate on it any more.

Q. You refuse to answer that question?

A. I said I cannot elaborate on it any more.

MR. TORRE: Mr. Moen, would you care to advise Mr. Price he could be forced by the judge to answer the question?

MR. MOEN: I think he has answered, he told you in effect he doesn't know. He told you that about four times, you keep asking him the same question over and over again. You have got your answer.

MR. TORRE: He hasn't answered the question. I asked him why Mr. Leaf assured him he wouldn't be embarrassed.

MR. HARTMAN: He hasn't answered the way you wanted it answered.

MR. TORRE: He hasn't answered it period.

MR. HARTMAN: He said he couldn't, he didn't know.

MR. MOEN: If you have any recollection of the conversation and want to explain it, you may, but if you don't have any recollection of it, why, say so and that is the answer to the question.

THE WITNESS: I don't have any recollection of the conversation beyond what is here.

Q. (By Mr. Torre) Do you have any recollection by what he meant when he assured you that it would not compromise his position nor adversely affect his relationship with the State Supervisor of Banking?

A. This is what he told me, and it's reported here.

Q. Why did he tell you that? What were the circumstances surrounding his statement is what I am trying to get out of you, Mr. Price.

MR. MOEN: If you can answer it, you may. If you don't know, say so.

THE WITNESS: I don't know.

Q. (By Mr. Torre) You just don't remember then, is that what you are saying?

A. That's correct.

Q. Then the next sentence talks about the salary the Lacey Bank president was receiving, what is the Lacey Bank?

A. Well, the Lacey Bank was a new bank formed in Olympia I guess at about the same time called South Sound National Bank.

Q. Was its organization encouraged by another bank, to your knowledge?

A. I don't remember what the circumstances were initially. I remember that we tried to be helpful to them through the provision of correspondent services. But there was no similar effort to be helpful here. We didn't have the same relationship with the developer.

Q. You had reason to believe there was an analogous situation between the bank you were seeking to encourage in Columbia Center and the Lacey Bank?

A. Only that Sears Roebuck was a factor in the Lacey Center.

Q. And Sears Roebuck is a customer of what bank?

A. Sears Roebuck is a customer of probably all of the banks in the state, or many banks in the state, let's say.

Q. Is there any particular bank that they have a strong relationship with in the state?

A. I think they probably have a good relationship with each bank in the area where they do business.

Q. Is there any particular bank in the state that they do business with?

A. Not to my knowledge.

Q. Would the Seattle First National Bank be one?

A. Seattle First is one, we are one.

Q. Would the Seattle First National Bank be involved in the organization of the Lacey Bank?

A. I don't know, I just don't know. I don't—I think we are correspondent of the Lacey Bank.

Q. Is the Seattle First National Bank also correspondent?

A. I just don't know whether they are or not.

Q. Do you know what other correspondents the Lacey Bank has?

A. No.

Q. Why did you select Lacey Bank? I mean why did the Lacey Bank come to mind to ask about the salary of its president among all the banks in the State of Washington?

A. I think I just said why.

Q. Why did you just focus on that one bank?

A. I think I just said that it was formed about the same time as this conversation.

Q. What does that have to do with the salary of the bank president?

A. It's a bank that was formed in a shopping center. It's the only shopping center that was formed about that time. It was the only bank that I knew about at that time, and I think I just posed the question, what are they paying him?

Q. I direct your attention to Exhibit 1-19, which is dated 6-7-67, please read that entry.

(Brief pause.)

A. I have read it.

Q. Is this the entry that you were referring to earlier in the deposition?

A. Yes.

Q. With regard to Mr. Beavers seeking prospective investors or recommending prospective investors?

A. Yes. I hope you understand that he didn't approach any two.

Q. He did recommend people?

A. Yes.

Q. And people were eventually solicited and—or stock was offered to them by someone connected with the bank?

A. No.

Q. Stock was offered to these people by some legal means, is that correct?

A. Yes.

Q. You are approaching Mr. John Malone, would you please identify Mr. John Malone?

A. Mr. John Malone is president of the McKiernan Hardware in Pomeroy, and he is a personal and business customer of the Pomeroy Branch of the National Bank of Commerce.

Q. Isn't it true that you were approaching Mr. Malone here and soliciting his investment in the Columbia Center National Bank?

A. Yes, I remember this conversation.

Q. In order to induce him to invest and to encourage him to seek other people to invest? You indicated to him the potential profitability of such an investment, is that correct?

A. Yes.

Q. Could it be possible that you indicated to him at that time that you were desirous of establishing a branch in that location?

A. It's in the second paragraph, naturally, and we naturally hoped the bank would be a correspondent of ours and that might one day be a part of NB of C.

Q. Do you think that the circumstances surrounding this meeting with Mr. Malone would lead him to believe that the bank would be acquired by NB of C?

A. Under no circumstances.

Q. It would not? Would you explain that, please?

A. Yes. I told Mr. Malone that we were encouraged and maybe two or three of their shareholders that I spoke to, and I spoke to each of them in precisely the same way. I told them what you read here, I told them that it was a business investment, a shopping center,

and the basis of our analysis and the sponsorship by Allied Stores should be a successful shopping center and that this could well be a successful—this could well be a good investment in its own right.

But as I said here, we hoped some day to be a correspondent, but there was no assurance that we could acquire the bank or that anyone could acquire the bank, and that it was a business investment as far as he was concerned, and then I just told him what is in the third paragraph.

Q. Didn't you indicate to him that it was highly likely that you would acquire the bank?

A. I did not.

Q. Wouldn't Mr. McKiernan, a hardware store owner in Pomeroy, be favorably impressed if the Chairman of the Board of the second largest bank of the state came to him and offered him an opportunity to invest in a small independent bank and indicated to him the National Bank of Commerce is desirous to establish a branch in that location? Don't you think—answer that question, would he be favorably impressed?

A. I have known Mr. Malone for ten years now from the date we acquired the bank in 19—I believe '57 to '67, I have known him well, he is an outstanding business man and supporter of the bank, and it was my business to know him. I am sure he wasn't taken by surprise at all. He had known me for a number of years.

Q. Is Mr. Malone an intelligent man, in your opinion?

A. I think he is a very intelligent man.

Q. Do you think he is a wise investor?

A. I don't know anything about his investments other than—

Q. Is he a successful business man?

A. He is a successful business man.

Q. Is he a customer of your bank?

A. Yes.

Q. Is he a good customer of your bank?

A. Yes.

Q. Is he a good credit risk?

A. My recollection is that he is a very good credit risk.

Q. Therefore, he is a substantial individual?

A. That's the kind of people we were looking for.

Q. So that's right, so he wouldn't do foolish things, would he?

A. I don't think he would.

Q. Did he invest in the bank?

A. He did.

Q. To what extent, do you recall?

A. I think it's part of the records somewhere, I don't recall.

Q. Why is this notation here with regard to your statement as to the desirability of the investment all stated in terms of prospective sale of the bank?

A. I think I have said that we hoped to be able to acquire the bank, and that was an important thing for him to understand. I did not record here, because there was nothing to record, about the fact that I also told him that it was a business investment; that there was no assurance that the National Bank of Commerce or any other bank would ever branch the bank, it was up to the stockholders of the bank over whom we had no control, and that was simply a fact of record that I as a banker knew about, and I thought it was important that I record this.

Q. You didn't point out to him the independent future earnings prospects of the bank, did you?

A. We had to make a projection for the Comptroller's Department.

Q. To Mr. Malone?

A. I think I did.

Q. Did you?

A. If I didn't now, I did at some other time.

Q. You didn't think that was significant enough to note in your memorandum, is that right?

A. Yes, that's correct. I think I have already put on the record the fact that both we and Allied Stores thought this could become the regional shopping center of Southeastern Washington.

Q. But the piece de resistance of this Columbia Center National Bank was its ability to be a branching vehicle for your bank, is that correct?

A. No question that one of the attractions to everyone who owns a unit bank in this state has been the hope that it might be attractive. I shouldn't say everyone, I think there are a lot of people who own unit banks who like it very much. But to say that a number of people would be interested in selling, and we bought—our competitors have bought banks over the years, and the premiums that I have talked about have developed.

Q. What do you mean by the final sentence there that Mr. Malone understood that no commitment can be made regarding the sale of the stock at this time?

A. I think that's a clear statement of what I have just said.

Q. What stock are you talking about and what sale?

A. Excuse me, no, that sentence—I think that I wasn't anywhere in here offering, and I didn't have the power to offer, I could mention a figure, but it never was within my power to make any commitment.

Q. An offer to purchase the stock?

A. No, offer to sell the 15,000 dollars worth of shares. That wasn't my business.

Q. I direct your attention now to Exhibit 1-20 dated 6-23-67.

A. Yes.

Q. Is it fair to conclude from that that NB of C did the initial work with regard to these papers that were being submitted?

A. Yes, I think we did much of the original initial work. We certainly had far more ability to make a projection, such as the memorandum refers to, than he did. He had none.

Q. Mr. Loney just reviewed it, is that correct?

A. I didn't say "just" reviewed it, he reviewed it.

Q. Did he have any input into the original documents?

A. Yes, he had quite a bit of input regarding the profit and loss projections, and the balance sheet, I don't believe he did have very much.

Q. Well then, what else was there? Profit and loss projections and the balance sheet are the only—and economic information; is he qualified as a lawyer to make an economic analysis?

A. I think I am saying here that we did most of the economic work.

Q. So it looks like Mr. Loney is just a rubber stamp in this situation, is that correct?

A. He certainly isn't, he is far from that.

Q. Was he—

A. I was going to emphasize that he is far from a rubber stamp.

Q. But he is not—

A. He is a very independent-thinking, good attorney.

Q. I am not denigrating his ability as an attorney or an individual, but in this situation he only reviewed and signed, is that right? He did not do profit and loss projections, he did not do balance sheet projections, he has no experience in banking, he is not an economist?

A. All right, you are right.

Q. So he had no input except for review, reading over and signing, is that right?

A. I won't try to elaborate. I say he reviewed the profit and loss and balance sheet and additional economic information, and I am confident, knowing Mr. Loney, that he had input in it and didn't simply sign it.

Q. You can't specify what input he had?

A. I can't specify, and I am sure that with the economists that were hired before or subsequent to this, that the majority of the economic information, as we both said, was not developed by Mr. Loney.

Q. Mr. Price, does the Comptroller of Currency indicate reasons why he denies charter applications?

A. Yes, sure, he does. I know that he does. I don't know how he does it in all cases, but he certainly does.

Q. I direct your attention to Exhibit 1-21 dated 9-21-67—correction, 9-23-67.

A. Yes.

Q. I am specifically referring to the notation entry section in Paren 4.

A. Yes.

Q. What was he referring to when he talked about Statement 7 in the application appeared to be a misrepresentation to the Comptroller?

A. I didn't have time to review that application, and I read this when you gave it to me before coming up here, and I wondered the same thing.

I think reference is made—some elaboration is in the last paragraph on the page. I am not sure whether it is sufficient elaboration or not.

Q. The fourth paragraph, is that right?

A. Yes.

Q. In light of your denials that there was an understanding that the National Bank of Commerce would acquire the Columbia Center National Bank, how do you explain Mr. Leaf's opinion that it was his understanding or opinion that the National Bank of Commerce "did have an understanding with the organizers of the proposed bank regarding its ultimate purchase by NB of C"?

A. I explain it by saying that the Comptroller wanted the strongest possible kind of sponsorship or support for the new bank, and I used the word "an understanding" regarding its ultimate purchase by NB of C. I was simply saying this, that as far as Mr. Leaf and the Comptroller were concerned, that would be the strongest kind of evidence of support and encouragement that we could be giving the bank, and we knew that that wasn't possible.

Q. Why wasn't that possible?

A. We simply could not for the reasons that I indicated some time ago, have that kind of understanding. If we could have branched it, we would have.

Q. Isn't that what the Comptroller wanted to know then, he said there was a misrepresentation and that there—that should appear in Statement 7 of the application, that there was an understanding? Isn't that his objection, that the understanding didn't appear, his objection wasn't necessarily the understanding, was it?

A. I don't know what his objection was. I say this was—I don't think this is fully clarified by the last paragraph on the page, but he wanted the strongest kind of support given to this new bank being started.

Q. The strongest kind of support would be an understanding it would be acquired, is that correct? That would be the strongest kind of support, wouldn't it?

A. Yes.

Q. So he wanted an understanding, is that correct?

A. I think he would have liked that if we could have given it to him.

Q. So you strive to have the strongest kind of support or understanding?

A. We certainly did. We had the strongest kind of support.

Q. And the strongest kind of support—

A. Not understanding because we couldn't have an understanding. We have the strongest kind of support of the bank and expressed the hope that one day we might be able—

Q. Were you incapable of this because of financial reasons, you couldn't have an understanding because you couldn't afford to purchase the stock?

A. No, that wasn't the reason.

Q. What was the reason?

A. I think I have expressed that before, that it's my understanding that under state law we couldn't have an ownership, we couldn't have any control over the election of directors, we couldn't have any—

Q. How does state law affect the operation of national banks?

A. Counsel?

MR. MOEN: You don't have to answer that question if you don't know the answer.

A. Well, I know that in this state we have a law concerning ownership of banks by corporations and that that prohibits it.

Q. Were you afraid then that you would be violating the prohibition against holding companies owning more than 24 percent interest in banks, directly or indirectly, I suppose?

A. That's a federal law, I think, going back—sure, yes.

Q. But there was no federal law then that would prohibit you to have an understanding because Mr. Leaf was encouraging you to have an understanding, and he is the regulatory—

MR. MOEN: Are you talking about an understanding with Leaf?

MR. TORRE: The strongest kind of support, i.e., an understanding with the organizer of the bank regarding the ultimate purchase.

Q. (By Mr. Torre) Mr. Leaf does not say here, did he, that such an understanding would be illegal, did he?

A. I think we told him that it would be illegal.

Q. All right. Mr. Leaf, therefore, did not say it was illegal?

A. That's what I recall Mr. Leaf saying.

Q. You told Mr. Leaf that it was illegal, is that correct? How did you explain—would you answer that question? You told Mr. Leaf that it would be illegal?

A. I don't recall specifically what I told him, but I knew that it would be—and I am just saying I presume that we expressed that to Mr. Leaf.

Q. Did Mr. Leaf say that it would be illegal under federal law?

A. I have put down what Mr. Leaf said.

Q. I am asking you not what you put down, I am asking you what Mr. Leaf told you at that meeting?

A. I am saying that I put down what I remember Mr. Leaf saying.

Q. But I am asking you what you remember Mr. Leaf told you other than what you put down.

A. I don't remember.

Q. Would you have put it down if Mr. Leaf had told you that it was illegal under federal law?

A. I think I would.

Q. Therefore, it's lucky that he did not tell you that it was illegal under federal law?

A. I think I knew that it was.

Q. But why did Mr. Leaf therefore encourage you to do an illegal act?

MR. MOEN: Wait a minute, there is no showing Mr. Leaf encouraged him to do an illegal act.

Q. (By Mr. Torre) Mr. Leaf said it was his opinion that there was an understanding that the organizers of the proposed bank—with the organizers of the proposed bank regarding its ultimate purchase by NB of C.

A. Then I must have told him that we had no such understanding. I have told you that in the case of Mr. Malone that I made it clear there was no such understanding.

Q. How does he get the opinion from you or how did he develop the opinion because he was only meeting with you, he wasn't meeting with anybody else, that there was an understanding?

A. I can't answer that.

Q. Did one of the stockholders come up and tell Mr. Leaf—

MR. MOEN: He already told you, Counsel, he can't answer that. Go on to something else.

MR. TORRE: That is not a proper answer to the question, Mr. Moen.

MR. MOEN: I think he fully answered it.

Q. (By Mr. Torre) You refuse to answer that along these lines, Mr. Price?

A. Say it once more.

Q. Why did Mr.—would you read the last question?

(Last question read by the reporter as follows: "Did one of the stockholders come up and tell Mr. Leaf—")

Q. (By Mr. Torre) —that there was an understanding?

A. I am not aware of any such.

Q. Did one of the organizers from outside the National Bank of Commerce tell Mr. Leaf that there was an understanding?

A. Mr. Leaf had encouraged us to give the strongest kind of support.

Q. I asked you, did one of the outside organizers—

A. Not to my knowledge.

Q. Therefore, the only group of people that could contact Mr. Leaf in this regard would be NB of C officers and yourself, is that correct?

A. I think that's correct.

Q. So, therefore, he must have gotten this understanding or opinion from speaking with you, is that correct?

A. I think that is probably correct.

Q. Therefore, you led them to believe that there was an understanding that you would have ultimately purchased the stock from the organizers?

A. If I did, I think I must have corrected it just about here.

Q. Mr. Leaf did not tell you that such an understanding was illegal under federal banking laws?

A. I don't remember that he did.

Q. If it was, do you believe that he would have?

A. I don't know.

Q. Do you think he should have if he was carrying out the duties of his office properly?

A. No, because we had no intention of having any such understanding, and I have told you that.

Q. If he believed—

A. It wasn't necessary. He could have told me about the entire operation of the office, but it wasn't relevant to this item.

Q. If it were illegal, though, wouldn't he have told you that it were illegal or would he have let you go ahead and perform an illegal act?

A. I suppose if it had been and we had asked him and we intended to.

Q. Would he have told you regardless of whether you asked him?

A. He might have volunteered that.

Q. But he didn't, is that correct?

A. I don't believe he volunteered it.

Q. I direct your attention to Exhibit 1-22 dated 11-10-67. Would you read the first and second paragraphs of that entry, please?

(Brief pause.)

A. Yes, I have read the two paragraphs.

Q. Why was it advisable that there be differing amounts of stock held by various directors that were affiliated with NB of C?

A. I don't remember what the reasons were. I can't elaborate on that.

Q. Can you speculate as to what the reasons would be?

A. I don't want to speculate.

MR. HARTMAN: I don't believe you can ask him to speculate.

MR. TORRE: He was there, you know, the facts are in front of him, and maybe he could surmise what they would be.

MR. HARTMAN: I object to the propriety of that question, speculation.

MR. TORRE: It's not improper to ask the witness to speculate.

MR. HARTMAN: To speculate, it certainly is. It has absolutely no value.

MR. TORRE: I don't want him to speculate.

MR. HARTMAN: You asked him to speculate.

Q. (By Mr. Torre) Would a possible reason be to disguise the interests of the National Bank of Commerce in such a bank?

A. I think the last part, as I read it, the last part of the first paragraph may answer the question, that ownership of an officer or director of a corporation of stock in another corporation does not indicate indirect control by the first corporation of the second, and we didn't want to —there was no control by any one of the other, and we didn't want to do anything that might indicate that there was because there was no indirect control.

Q. Well, in other words, you felt that if there were uniform ownership, that there would be some possibility it might be interpreted as indirect control?

A. I think we were advised that in a number of cases that it indicated there was, a number of cases which concluded—

Q. That would mean concluded from the fact that ownership was uniform among directors, that there was control?

A. That may be it.

Q. Could that be it if we put together the fact that we wanted staggered ownership and that there were such cases where there was control indicated?

Would it appear—would you read that question?

(Last question read by the reporter.)

Q. (By Mr. Torre) Would it appear that the stag-

gered ownership would be independent investments rather than indirect corporate investment, is that correct?

A. That appears to be the reason.

Q. Therefore, you were taking measures by not loaning money to officers or directors to purchase stock and by staggering stock ownership to disguise any possibility of direct or indirect corporate control of this branch, is that correct?

A. No, we weren't trying to disguise anything. We were trying to make it as clear as we could. I thought it would be clearer.

Q. Were you trying to avoid any charges?

A. No. I will answer the question that we were trying to make it clear, and I thought we had made it clear by having no ownership in the corporation, by having independent people owning the stock to simply be a correspondent with a hope of acquiring the bank but with absolutely just the clearest kind of lack of control of the bank. Just everything in here indicates that.

Q. The bank is not an eleemosynary institution, it's a business organization, is that correct? It's not a charity organization, it's out to earn money and open branches and make profit, is that correct?

A. That's correct.

Q. And it wanted to establish a branch at Columbia Center, is that correct?

A. That's correct.

Q. And it was not trying to disengage itself from the Columbia Center National Bank by taking the action indicated in this exhibit, is that correct?

A. It was never engaged beyond being a correspondent.

Q. Do you deny it wasn't trying to insure that itself sought a branch at Columbia Center at some time in the future?

A. There was no way we were assured it would ever be a branch. There was no way, and we have said that. If we could have—

Q. Would your chances be increased by the fact that three or four or five directors of the bank would own stock in Columbia Center National Bank?

A. That is not considered to be control.

Q. Would it heighten your chances of acquiring the bank? Would that be a step that would give you the opportunity to acquire it in the future?

A. I think it would tend to keep it friendly to the National Bank of Commerce, but I don't think any of the three or four or five owners would have made an imprudent—wouldn't want to make an imprudent decision if the time came when they wanted to sell the bank.

Q. But it would heighten the opportunity if the bank moved to acquire it, is that correct?

A. That's speculation.

Q. Mr. Price, I will direct your attention to 1-31, which is dated 7-1-68.

A. Yes.

Q. The third paragraph there. By "priority listing of potential stockholders," do you mean priority of friendliness to NB of C?

A. No, I think I mean advantageous to the new bank. I think there is an incorrect word again in here, "distinction" must be "in addition to simply being good customers." I will change it if you want me to. It just doesn't read clearly this way.

Q. I am sorry, it's my error, I noted for the record that that entry in the memo was not entered by Mr. Price but written by Mr. Buck, so we will go on.

I will direct your attention now to entry dated 8-15-68, Exhibit 1-33. Have you read it, Mr. Price?

A. Yes, I have.

Q. And who is Mr. Glen Carrington?

A. He is a former director of the National Bank of Commerce, director for many years who did have a business investment I think in a store over in Richland, Washington about five miles from—

Q. Was he a director at the time of this entry?

A. Yes.

Q. Were you a director at the time of this entry also?

A. Yes.

Q. In light of your previous statements in this deposition and your acknowledgment of the statements in this document are correct, does the second sentence appear inconsistent with your previous statements?

A. Not to me. It might be a little bit stronger, but I think we had a very strong hope that it would eventually become a branch of the National Bank of Commerce.

Q. Doesn't that imply that you were assuring that you were going to acquire that bank by placing the stock in strong hands? Yes or no.

A. I read it that way.

Q. Therefore, you were taking actions that would insure your future acquisition of that stock, if that sentence stands for what it says?

A. I don't think this sentence really is correct. I think that is too strong a statement and that it is outweighed by everything else that is in here.

Q. This is late in time, Mr. Price?

A. Yes. This is four years ago, it's a year before—

Q. You wrote it at that time, is that correct?

A. Oh, yes.

Q. You didn't write it today?

A. Pardon?

Q. It wasn't written in a recent period of time?

A. Oh, no.

Q. It was written when your memory was fresh, is that correct?

A. Yes.

Q. And you ought to know what you said, is that right, Mr. Price?

A. Sure.

Q. And you don't make loose statements?

A. I try not to, but I think I may have here.

Q. You still deny my other statement that you weren't endeavoring to assure the acquisition of that bank?

A. We were trying to do everything we could to start a strong correspondent with the hope that it would become a branch of the National Bank of Commerce.

Q. You don't deny that you—that the statement evidences your desire to acquire that bank, that you intended to acquire it because—

A. I do deny that we intended to acquire it. We could have no such intention.

Q. Why did you say that you assured the bank they would eventually become a part of NB of C if you didn't intend to acquire the bank? Why are you going to assure something that you didn't intend? Isn't that inconsistent, Mr. Price?

A. It certainly is.

Q. That you don't really want to admit that you intended to acquire that bank?

A. No, I would like to admit that this statement is inconsistent with the balance of the record.

Q. It may be inconsistent with the balance of the record, but it was true when you wrote it, isn't it, Mr. Price?

A. It couldn't have been. There was no way for us to intend to acquire the bank.

Q. You couldn't have an intent?

A. No. How would you have—how could you have an intent unless there was a possibility. We could have a desire and a hope, and that is far different from an intent.

Q. But the balance of the record seems to indicate to me, Mr. Price, that you took every step that you could to lock that bank under the National Bank of Commerce and to insure that you would acquire it as a branch?

A. I think we took every step that we could to see that it was friendly to the National Bank of Commerce, and we would have as good a chance as possible to get it if they ever wanted to sell it.

Q. Various other banks in the State of Washington other than the old National Bank established branches by encouraging organization of new banks?

A. I am not aware of how any, including the old National Bank, encouraged the formation of banks. I have said in here that we understood, and I do understand that the old National encouraged the formation of three banks in the Tri-City area.

Q. Mr. Price, you are an officer of the King County Building Company, is that correct?

A. Yes.

Q. And the King County Building Company was the lessee of the ground upon which it built the building for the Columbia Center National Bank?

A. Yes.

Q. Does it sound correct to you that the cost of that building was somewhere in the realm of $230,000?

A. I think that's about correct.

Q. For your reference, I would refer you to an entry of 1-38 of this exhibit dated 1-9-69, the entry is made by Mr. Abersfeller of your bank.

(Brief pause.)

A. Yes, I have read it.

Q. Is that correct, Mr. Price, that the building cost $230,000?

A. That's right.

Q. Is it correct that what is stated here, that it is being leased at the base cost of $180,000?

A. I think that's correct.

Q. Are those ball park figures?

A. Yes, I think so.

Q. Why did the King County Building Company choose to subsidize the Columbia Center National Bank in the amount of $50,000 more or less?

A. Well, I read this or saw it before we gathered here, and in reading some of the additional material, I think reference is made to the budget and to the projected profit and loss figure of the bank, and that that was based on a $180,000 figure, and the developers of the shopping center pressed very hard to have a building built that in its initial stages a unit bank simply couldn't support, and that—

Q. So you sought to accommodate the leasing arrangement with the Columbia Center National Bank to its prospective income, is that correct?

A. Yes.

Q. Would you characterize that as a subsidizing of the Columbia Center National Bank to the extent of $50,000?

A. It would appear that way, yes. I think that if this bank develops the way that we hope it will, the bal-

ances they carry, its value to us, it would justify that initial subsidy.

As you can see, we have helped them in other ways too, and the bank is developing, the shopping center is developing, and I think it will be worthwhile. But it's a long-term kind of investment.

Q. So the bank has invested $50,000 in this bank?

A. Well, we made it in the property, and that we have to adjust the lease according to what the bank could pay and, obviously, shopping centers do not want to have a building on their—a unit bank getting under way couldn't initially support, just in the same manner that their own buildings couldn't be initially supported by their sales.

Q. Would this be another way of insuring that the organizers of the Columbia Center National Bank would think favorably of the National Bank of Commerce?

A. I don't believe so.

Q. You think they would think favorably if they were getting a $50,000 subsidy from the bank?

A. I don't think so. I hope they wouldn't think unfavorably, but—

MR. TORRE: That's all the questions I have. Let's take a short break for a while.

(Brief recess taken.)

Q. (By Mr. Torre) Here is a document dated 5-1-71, it's an information memoranda, and it is initialed "C.R.C". Would you please look at that?

A. Yes.

Q. Is there any particular part of this you want to refer to?

A. Yes, the part that I am concerned with is the fourth paragraph, which is, "It was the conclusion of the committee—"

MR. HARTMAN: Did you put an identifying number on it?

MR. TORRE: We will refer to this as Price No. 8.

(Price Deposition Exhibit No. 8 marked for identification by the reporter.)

(Brief pause.)

THE WITNESS: All right, I have read that.

Q. (By Mr. Torre) Isn't it true, therefore, from the statement in the first sentence of that paragraph that Columbia Center, if not a de jure branch is a de facto branch of the bank?

A. I have never seen this memorandum before and I just say no, it's not.

Q. Does it appear to be an authentic memorandum?

A. No, I think the memorandum is authentic and it is a credit matter, and I see that Mr. Buck was there. This "C.R.C." is Chadwick—Chadwick it's got to be, a credit officer named Chadwick.

I think I was saying we should use harsh credit judgment on this and that we shouldn't waive any good credit standards is the way I read it.

Q. Mr. Stowell was an officer of the bank at this time?

A. No.

Q. A director?

A. He was a director, and he is a director. He was an officer of Marine Bancorporation.

Q. And Mr. Buck referred to at the top is an officer?

A. Yes, he is an officer.

Q. And Mr. Shannon, who is he?

A. He is a Senior Vice-President, Chairman, was then of the Senior Officer's Loan Committee.

Q. And Mr. Mangels?

A. Vice-President and Vice-Chairman of the Senior Officer's Loan Committee.

Q. And Mr. Lockwood?

A. Vice-President and member of the Senior Officer's Loan Committee.

Q. So this is top management of the bank, is that correct?

A. This is the top credit management of the bank.

Q. And the top credit management of the bank agreed, therefore, according to the memorandum that the Center should be treated as a de facto branch of the bank?

A. Well, I read the same thing you do, the credit people were taking that view.

Q. Why would they take that view of it?

A. Because we have probably stricter credit standards than most banks for our people, and we weren't going to do something because Columbia Center asked us to do it, just win their favor if we thought it was a poor credit policy, and it looks like that's what Chadwick got out of this.

Q. In view of Mr. Loney's request that there be a delineation of management's responsibilities between NB of C and the Columbia Center National Bank and in view of this statement that it was being treated as a de facto loan branch—

MR. HARTMAN: What was that question again?

THE WITNESS: There hasn't been a question yet, just a comment.

MR. HARTMAN: Were you paraphrasing the document?

MR. TORRE: Read the last question.

(Last question read by the reporter.)

MR. HARTMAN: Where does it say it's a loan branch?

MR. TORRE: Well, he testified that the loan officers of the bank decided to treat it as a branch.

MR. HARTMAN: The document says, "Branch"; it doesn't say, "Loan Branch."

THE WITNESS: I think if you would like to go back, I think they said they treated it as though it were a credit from a branch, and we would be just as severe on it and we would not be leaning over just because it was a correspondent bank.

Q. (By Mr. Torre) So you are treating it more as a branch than a correspondent?

A. I am saying we are treating the credit.

Q. The credit terms, you are treating more than as a branch?

A. We are trying to apply the best credit judgment that we could.

Q. Doesn't this indicate that you intend to operate as a branch some day especially in light again of Mr. Loney's statements?

A. I thought it was the opposite.

MR. MOEN: I think he just said the opposite.

MR. TORRE: Mr. Moen, let Mr. Price answer it.

THE WITNESS: I have answered it. I think I said I think it's the opposite. We were not going to lean over, so we—make any concessions because of its being a good correspondent. We wouldn't consider it unless it were sound credit.

Q. But you were going to treat it more as a credit branch rather than a correspondent?

A. I think in this case we were asking that this man Chadwick apply the strict credit judgment that we applied on our own credits.

Q. And it's true you were also making several what you termed one hundred percent overline loans to this bank during recent years, is that correct, or since its institution?

A. I don't see that here. I think we have made such loans to them and to other correspondents.

Q. And Mr. Abersfeller—

A. Alaska and places like that, we frequently do that.

MR. TORRE: Strike that last comment.

Q. (By Mr. Torre) What did you mean when you said Alaska?

A. I say with correspondent banks in Alaska we frequently make one hundred percent overlines.

Q. Why is that?

A. Because the local bank will want to reserve its borrowing to take care of seasonal fluctuations, seasonal needs.

Q. This is because of the high loan demand area and the low deposit generating area in Alaska?

A. It relates more to the lending limit of the bank and high loan demands, yes, not so much the deposits as the lending of the loans.

Q. It's a fertile ground for offering overlines to correspondent banks, is that correct?

A. Yes.

Q. But do you treat any of those banks as branches in the way the committee recommended here?

A. I think we have generally tried to treat them all with sound credit judgment. Sometimes we may have

been lenient and hoped, that we might take a higher risk than normal, but I think it's not our practice.

MR. TORRE: Mr. Verveer has a few questions on another subject matter.

MR. MOEN: May the record show our continuing objection to interrogations from two different lawyers.

MR. HARTMAN: Intervenor's objection continues also.

Q. (By Mr. Verveer) Mr. Price, I have a document here labeled, "Credit Memorandum, Pullman," the date source is 5-7-68, and the initials "A.P.", and I would like to ask you to look at it, please.

(Brief pause.)

A. I recall this.

Q. Did you author this document, Mr. Price?

A. Yes.

Q. Is this in the course of your employment with the National Bank of Commerce?

A. Yes.

Q. And it is an accurate reflection of your thoughts at that time?

A. It certainly is.

MR. VERVEER: Have you had an opportunity to see it, Mr. Moen?

MR. MOEN: Yes.

MR. VERVEER: We would like to offer this document as Price Exhibit No. 9.

(Price Deposition Exhibit No. 9 marked for identification by the reporter.)

Q. (By Mr. Verveer) Mr. Price, the last sentence of Paragraph 2 under the date of 5-7-68 says, "The community," and parenthetically I assume that has reference to Pullman, "has an air of prosperity that made me envious of O.N.B. and Seattle First." Would you explain that very briefly?

A. We weren't—the National Bank of Commerce wasn't there. The community has grown a great deal since I have been there before; I wish that the National Bank of Commerce had been there.

Q. Paragraph 4 relates in the first sentence to certain conclusions that you have drawn from correspondence from Mr. Mills, would you identify Mr. Mills?

A. Yes. Mr. Mills at this time—he was Vice-President in charge of our correspondent bank activity, since retired.

Q. The first sentence states, "I am satisfied from correspondence Mr. Mills has had that we could easily find sponsorship for a new unit bank in Pullman."

The second sentence is, "Such a unit bank could branch adjacent to nearby Colfax, the county seat, and a city which is also clearly prosperous."

So in this memorandum you are pointing out the possibility that the National Bank of Commerce could find sponsorship for a new unit bank in Pullman, is that correct?

A. I think we had been asked to do this before. I don't recall Mr. Mills' correspondence exactly, but I think over the years we had correspondent relationships in Pullman. We no longer had any, and he had known people in that nearby community, and I think that resulted in the correspondence to which reference is made.

Q. Could I ask you about the second sentence, that sentence seems to say that a sponsored bank in Pullman could branch adjacent to nearby Colfax, what do you mean by that?

A. Well, if a unit bank were started in Pullman, it could branch anywhere in Whitman County under the laws of this state, and there are two prosperous cities in Whitman County, one is Pullman and one is Colfax. So that it could be a two-office bank in a reasonable time. That's one of the wealthiest parts of the state, in the Palouse wheat country, and a lot of farmers with very substantial means and a fine deposit generating area of the state.

Q. Would it be accurate to conclude that the suggestion or the recommendation contained in Paragraph 5 was caused in some sense by the entry which you expressed, old National Bank and Seattle First in Paragraph 2?

A. Yes, I think directly. I said it was a very prosperous part of the state, it's a fine deposit generating area. A bank over there could be successful, and if we could properly be there, we would like to be.

Q. And you could—or have you a possibility of being there if you were a unit bank there in Pullman and the owners of that bank decided at some point that they wished to sell the bank?

A. Yes. Pullman is a prosperous community. But if you have ever seen it, it's a small community, it's a compact community, both of them down in valleys. They serve a wide territory. But everything is done within about two blocks of the city center. So that if you went in there on a unit basis, everyone else is there on a unit basis, you would be just as prominent as anyone else in town in either city.

Q. At the time you wrote this document, was there any way in which the National Bank of Commerce could acquire a branch at Pullman?

A. I don't believe there were any unit banks there.

Q. If your recommendation in Paragraph 5 had been followed and with success, would there have been a possibility that the National Bank of Commerce would have acquired a branch in Pullman?

A. Eventually, hopefully, yes.

Q. And that possibility to some extent motivated your recommendations, I take it?

A. Certainly.

Q. Mr. Price, I have another document here labeled, "Minutes, Branch Expansion Committee Meeting, May 22, 1968." I would like you to examine the document, please. I invite your attention to the second page entitled, "Pullman."

(Brief pause.)

Have you had an opportunity to examine the document?

A. Yes.

Q. Is the signature on the fourth page of the document yours?

A. I think it is.

Q. Did you cause the document to be produced?

A. Yes. I don't remember writing it, I think that it may have been done at my instructions by someone else, but I was at the meeting and I signed the minutes, and I am quite sure they are accurate, as accurate as possible.

Q. Mr. Price, it appears from this document that in May of 1968 the Branch Expansion Committee looked into the possibility of encouraging the formation of a unit bank in Pullman, is that correct?

A. Yes, it does.

Q. Is this an unusual thing for the Branch Expansion Committee to examine?

A. It was—no, I don't think so. I don't think it came up very often because there aren't very many communities around like this. As a matter of fact—well, I can recite some other ones where we have looked, but generally the communities have been incorporated without banks in them so we could go into them, like Long Beach and some other places, without having to consider the sponsorship or encouragement of such a suggestion as this.

Q. You say there aren't many communities around like Pullman, what do you mean specifically by that?

A. Where I can go and be surprised at the changes that have taken place. I generally cover the state pretty well, and I missed that one.

Q. Now, surely the Branch Expansion Committee couldn't consider things on the basis of your visceral reaction to communities that you come upon in your travels?

A. This is pretty well documented by slides and economic statistics, preliminary economic statistics, Whitman County figures, Pullman figures up to the year 2020 or whatever the figure is. This is about the way these things begin.

Q. What made Pullman an interesting and unusually attractive community from the point of the Branch Expansion Committee?

A. Two things, growth of the university and wealth of the community.

Q. How would that make Pullman any different from any other community, that is, growth, I take it in terms of population and wealth?

A. Well, I think the figures will just suggest that it has grown more rapidly.

Q. You are suggesting that Pullman was unusual in the sense that it enjoys or has enjoyed in recent years and you expect will continue to enjoy economic growth, is that correct?

A. Principally related to distribution center or a small center in a wealthy part of the state that is influenced, as far as people go, by a university, and we have a very fine office in the University of Washington, and here if we could have had a branch in Pullman, we could have enjoyed a deposit growth and a growth in student customers who might move out through the state and bank with us elsewhere. It's a good place for the banks that are there.

Q. And it was so good a possibility that you at least were prepared to recommend in the document you saw previously that the bank undertake encouragement of formation of a new unit bank, is that right?

A. If we could do it with other things that we were doing and, you see, there is a big list of them here, this was a community we should be aware of.

Q. At the conclusion of the paragraph, the last sentence appears to embody a recommendation on the part of the Branch Expansion Committee, and that recommendation appears to be that your bank should do something to encourage your new unit bank at Pullman, is that correct?

A. Without specifying any time, yes, it is, it does say that.

Q. Is it fair to gather from what you just said about Pullman that you would be interested in examining the possibilities of encouraging the formation of a unit bank in communities that show economic growth?

A. I will say first of all this was six on the priority list that day, so it didn't—although this would appear—and I really was quite enthusiastic, but it may have been sort of a visceral feeling, as you say, it had a six priority

out of seven, but as I also said, Pullman is a small compact community which we could reach by an office, and we felt we could serve a wider area from an office in the community.

There were no branches of banks in the community. There is one bank from each organization, so we could stand on an equal footing with the different banks in the community and where we could—if we could do that, I thought it was an interesting community.

Q. Mr. Price, if a unit bank were to be formed in the community of Pullman by whatever method, would that bank be free to branch around the community so long as it remained independent?

A. Yes, it could.

Q. There would be nothing to prevent that?

A. No.

Q. And in a growing community—

A. There is no law that would prevent it.

Q. And in a growing community that might even be desirable from the standpoint of—

A. History didn't prove that it was because these others were unit banks that had the same opportunity. Times change, but that is speculation a little bit because the banks that were there didn't do it.

Q. But I am saying just generally a bank, an independent bank is free to branch in any community in which it is established?

A. I think legally it is, yes.

(Price Deposition Exhibit No. 10 marked for identification by the reporter.)

MR. VERVEER: Could we mark this as Price Exhibit No. 11?

(Price Deposition Exhibit No. 11 marked for idenfication by the reporter.)

Q. (By Mr. Verveer) Mr. Price, I hand you a document headed, "Credit Memoranda, Pullman." This particular one entry I am concerned with on the page is 4-25-69, and it bears a dictator's initials of "A.P." I would like you to examine that, please.

(Brief pause.)

A. Yes, I have read it.

Q. Mr. Price, have you had an opportunity to examine that document?

A. Yes.

Q. And did you author the document?

A. I think so, yes.

Q. And is it an accurate reflection of your state of mind at the time?

A. I think it's what I dictated, yes.

Q. You did this in the normal course of your employment with the National Bank of Commerce?

A. Yes.

Q. I get the impression from the first two sentences of this document that you discussed the recommendations we have seen previously with Mr. Carlson and that he felt that there should be some delay.

Could you tell us who Mr. Carlson is?

A. He was then President—no—yes, he was then President of the National Bank of Commerce.

Q. Did Mr. Carlson explain why he felt the project should be undertaken?

A. I just don't remember.

Q. The third sentence you said that if the National Bank of Commerce didn't shown any interest in formation of a unit bank, that another organization might. Do you recall what you had in mind there?

A. No. My recollection from the reference is to Mr. Mills' correspondence of some time ago that people did want to get another bank going in Pullman, and they couldn't do it unless somebody would be an important—a strong correspondent for them. I am sure that that was the case, and I just presume that that is what I had reference to. Old National was there, Seattle First was there, and there are other branching banks in the state, a number of them, and I imagine we were just concerned that in a community like this—or I was concerned that in a community like this, it would be interesting to someone else the same as it had been interesting to me, and there was a local interest in having a bank.

Q. Mr. Price, which other organizations would be included among the competitors you just mentioned?

A. Certainly Peoples National Bank here in Seattle, the National Bank of Washington in Tacoma, the Seattle Trust & Savings then had gone over to Eastern Washington at Cle Elum, and there were banks like the Bank of Yakima which was—I think it has seven or eight—I'll say six or seven offices around Yakima. There are just a number of banks that have shown a desire to expand in this state, and I frankly don't remember whether there was a specific one or not. I don't think there was.

Q. Mr. Price, how big is Seattle Trust & Savings Bank in terms of deposits?

A. Hundred plus million.

Q. How big is the Bank of Yakima in terms of deposits?

A. I think it's sixty plus million.

Q. Do either one of those banks you might regard as a potential encourager or sponsor of a new unit bank in the community of Pullman?

A. I just don't know. I know from what Seattle Trust has done, that they have gone to Olympia and they have gone to Cle Elum. I guess those are the only two places outside of Seattle. They confined themselves generally to here. They got a long relationship with the bank in Olympia and I think probably that was—I don't know about Cle Elum, really why they went over there.

As far as Yakima goes, it has not branched outside of the City of Yakima, I think.

Q. Are you saying—I am sorry, I didn't quite understand this. Are you saying that Seattle Trust & Savings Bank had assisted in the formation of unit banks in the way that you are suggesting here in Pullman?

A. No. Years and years ago something like in the early Forties, the middle Forties maybe, a group of men started a bank in Olympia that was independent for, I think, twenty years. There were some people who did have social and other ties to the Seattle Trust & Savings Bank that eventually may have helped their merger. That is a long time back.

Q. Do you think the Seattle Trust & Savings Bank has the capability of sponsoring or encouraging or assisting a unit bank in a community like Pullman?

A. Well, I don't think they have demonstrated really any desire to do that, and that must relate to their capability somewhat, their personnel, the type of credits they get into.

Q. How big did you say Seattle Trust & Savings Bank was?

A. I think it's about 140 million. Is that right?

MR. MOEN: I don't know.

THE WITNESS: Maybe 125 to 140.

Q. (By Mr. Verveer) Now, you mentioned the other possibility was Peoples Bank?

A. Peoples Bank.

Q. And the National Bank of Washington?

A. Yes.

Q. That has now merged with the Pacific National Bank?

A. Yes. At this time you make me recall that would have been a potential candidate although even at their size of 250 million, 240 million, they never have shown any desire to branch outside the City of Seattle and county.

Q. Did you suggest that a bank the size of Peoples might be capable of doing it?

A. Peoples is around three to four hundred million.

Q. That is your professional judgment as a banker?

A. It has done it, it's not only capable of doing it but it has eight offices in the central part of the state, and it has offices in the southern part of the state. But except for those two concentrations, seven or eight offices and in the Columbia Basin where the agricultural credit demands are all the same and common kinds of demands, they serve that area, they serve the Greater Seattle Area and now they have an office in Vancouver, Washington, which is—

Q. But you believe a bank of that size would be capable of assisting a new unit bank?

A. Sure, yes, I think that one definitely would.

Q. Even at a great distance even though it's headquartered here in Seattle and the unit bank is in the eastern part of the state?

A. Yes. A 400 million dollar bank has demonstrated it, it has gone out and done it.

Q. So basically a bank—

A. Those aren't big offices, they require a few people to manage, I don't think any of the banks in the Columbia Basin are large offices so they are not difficult to staff.

Q. Would it be inaccurate to conclude that what you have been telling me really is that the size of a bank in terms of its deposits is directly related to its capability when it comes to assisting or sponsoring or encouraging formation of a new unit bank?

A. Yes, I think certainly it is.

Q. And we seem to have concluded that banks roughly in the 400 million dollar size and above would be capable of going out in the context of this state?

A. I'll just say in this state, that's all I am closely familiar with.

Q. I am quite interested in the last sentence in your memorandum; it says, "In the near future I will call our banking friends in Spokane at the Washington Trust Bank (Old National Bank already has a bank in Pullman) to let them know of our interest."

Could you explain that statement to me?

A. I don't recall really why I said this. But in reading it over and trying to think, we had two correspondents in Spokane, Washington Trust and Old National Bank. We were close to both of them, and I just can't think whether it was just because I had been there and seen this area, it was an adjacent county to Washington Trust Bank's headquarters, it's an agricultural type of county that they knew—or it was in a county adjacent, so they could learn it. They aren't an agricultural bank, and I just thought they might like to know.

I really can't think of any other reason that I would have done it.

Q. This statement seems to me to be just a trifle ambiguous, and in order to help me clear it up, when

you said you would contact your friends in Spokane at the Washington Trust Bank to let them know of our interest, I take it from your previous answer you were saying that you thought this was an attractive possibility and that they might want to examine it? Is that a proper interpretation to put on that?

A. It was adjacent to this community, what is it, 50 miles away?

Q. It would certainly be improper to interpret and say you were trying to warn them off and say in the sense we recognize this possibility, we the National Bank of Commerce, is interested and we don't want—or we would not view kindly—

A. I am sure I wouldn't have said that, I never thought that, we never operated that way, I know that wasn't the intent.

Q. Would Washington Trust Bank have deferred to your statement of interest if they also thought it was an attractive possibility?

A. I am not sure what you are asking.

Q. Would they have deferred to the National Bank of Commerce?

A. I don't think they have any reason to defer to us.

Q. Do you know if there is a unit bank in Pullman today?

A. Yes, sure, there is a unit bank in Pullman.

Q. Do you know anything of that bank?

A. Very little. I know who runs it, I think I know who runs it, a man named Emil Schell, who used to work for us. But I don't know anything about its growth or anything else.

Q. Would the fact that there is a unit bank in the community of Pullman, does it open up the possibility that your organization or another might one day get into that community, is that correct?

A. Sure, if they want to sell it, I am sure they could find buyers. But I have forgotten whether it is a state bank, and if it is a state bank, they can't sell it for ten years.

Q. Could I ask you why you put the Washington Trust Bank onto this what you thought was a relatively exciting possibility?

A. I think they were friends of ours, correspondents of ours. I think that is probably the reason.

Q. Is a banking community in Washington what you would call a fairly close group.

A. I don't—I think we all know each other, but I think we have probably as competitive a situation here as probably any branch banking state in the West. I think we probably had more strong—Washington Trust is a correspondent, and we may have passed the word on for that reason. It just did look interesting.

But in any other sense, I don't think there is any closeness in the sense that I believe you are speaking of.

Q. I wasn't suggesting—I wasn't using that word in any pejorative fashion or in any collusive fashion, as Mr. Torre points out.

Do you know if the Washington Trust Bank has done anything to encourage the formation of the unit bank now located in Pullman?

A. I don't know that they have.

Q. Have you ever mentioned a new bank in Pullman to Mr. Philip Stanton?

A. I don't think I ever have.

Q. You don't believe you have ever had a conversation with him about that?

A. No, I don't really think I have. I will just say beyond this, and I will presume that I did something in answer to that down there, but that I did call—

MR. TORRE: Mr. Moen, stop coaching the witness.

MR. MOEN: There is no question in front of him, if you want to ask him a question.

MR. TORRE: You are coaching him.

MR. MOEN: I am not coaching him.

MR. TORRE: I heard you over here.

MR. HARTMAN: Are you implying that the witness is not entitled to have his attorney sit close to him?

MR. TORRE: I am not saying that, I am saying he can't have his attorney whisper in his ear.

MR. HARTMAN: Do you mean his attorney is not entitled to advise him? I want to hear you say that.

MR. TORRE: He can give legal counsel but he can't coach him in his answer. There was no legal question before him at the time.

THE WITNESS: Let's go back to the last sentence, and it says, "In the near future I will call our banking friends in Spokane to let them know about our interest," and you asked had there ever been anything, and I will just say I presume I did call our banking friends in Spokane and let them know of our interest.

MR. VERVEER: Thank you.

Q. (By Mr. Torre) Is that to say you showed them some deference with regard to your interest in that area?

A. No, that's not what I said.

Q. Do you think the Washington Trust Bank would have the ability to sponsor a bank in that area if they so chose?

A. Personnel, I don't know, I just see by looking around that they haven't and other banks their size haven't reached very far, and that's just the kind of support of unit banks, so I will just—

Q. You are letting them know of your interest; do you think it might be possible they might be interested in that area also?

A. Because it's close to them and to the community and a college town that they go back and forth to all the time.

Q. Does that violate your 400 million dollar guideline to an extent?

A. I don't think so. I think Seattle Trust is a relatively small bank, and there are some peculiar or special cases where they are outside of the region they really serve.

Q. Their concept could be attractive markets outside the Washington Trust Bank?

A. Out of this—

Q. Out of the Spokane area by sponsorship?

A. Like this one, yes.

Q. Would you say that if the National Bank of Commerce would so sponsor in that area, it would have

a greater impact on the market than the Washington Trust Bank sponsoring in that area?

A. That's a speculative question. We think we are a great bank and so I would think we would have some power.

Q. From the fact that you have greater resources and a greater management department, would you think that would be a factor that would influence your impact on such a market?

A. I just don't—

Q. Do you think it would be a factor that would influence the market?

A. I don't understand what you are asking.

Q. Well, we will assume on the one hand that Washington Trust were to sponsor a bank in a market appropriate and the National Bank of Commerce were to sponsor a bank in such a market, not simultaneously, in two separate instances is what I am posing to you; would you agree that because of its size and resources and managerial department that the National Bank of Commerce would have more of an impact through entering such a community?

A. It would depend almost entirely upon the leadership of the unit bank.

Q. Isn't it more likely, though, that they would have more of an impact?

A. I think it comes right back down to the leadership of the unit bank.

Q. Wouldn't a 1.3 billion dollar bank exert more effort than a 100 million dollar bank? Don't you think size means anything?

A. No, no, I am not saying that size doesn't mean anything. I am saying that the correspondent bank can do so much for a unit bank, and as far as the customers of the unit bank go, their knowledge of the correspondent is minimal, and I think it depends on the leadership of the unit bank, and if they do an aggressive job, they will take care of their customers.

MR. TORRE: Thank you very much, Mr. Price.

(Witness excused.)

/s/ Andrew Price, Jr.
(Signature of Witness.)

PRICE DEPOSITION EXHIBIT 1-1 IS REPRODUCED AS GX J-54 ON PAGE 1430.

PRICE DEPOSITION EXHIBIT 1-2 IS REPRODUCED AS GX J-53 ON PAGE 1429.

PRICE DEPOSITION EXHIBIT 1-3 IS REPRODUCED AS GX J-52 ON PAGE 1428.

PRICE DEPOSITION EXHIBIT 1-4 IS REPRODUCED AS GX J-51 ON PAGE 1427.

PRICE DEPOSITION EXHIBIT 1-5 IS REPRODUCED AS GX J-50 ON PAGE 1426.

PRICE DEPOSITION EXHIBIT 1-6 IS REPRODUCED AS GX J-49 ON PAGE 1425.

PRICE DEPOSITION EXHIBIT 1-7 IS REPRODUCED AS GX J-48 ON PAGE 1424.

PRICE DEPOSITION EXHIBIT 1-8 IS REPRODUCED AS GX J-47 ON PAGE 1423.

PRICE DEPOSITION EXHIBIT 1-9 IS REPRODUCED AS GX J-46 ON PAGE 1422.

PRICE DEPOSITION EXHIBIT 1-10 IS REPRODUCED AS GX J-45 ON PAGE 1421.

PRICE DEPOSITION EXHIBIT 1-11 IS REPRODUCED AS GX J-44 ON PAGE 1420.

PRICE DEPOSITION EXHIBIT 1-12 IS REPRODUCED AS GX J-43 ON PAGE 1419.

PRICE DEPOSITION EXHIBIT 1-13 IS REPRODUCED AS GX J-42 ON PAGE 1418.

PRICE DEPOSITION EXHIBIT 1-14 IS REPRODUCED AS GX J-41 ON PAGE 1417.

PRICE DEPOSITION EXHIBIT 1-15 IS REPRODUCED AS GX J-40 ON PAGE 1416.

PRICE DEPOSITION EXHIBIT 1-16 IS REPRODUCED AS GX J-39 ON PAGE 1415.

PRICE DEPOSITION EXHIBIT 1-17 IS REPRODUCED AS GX J-38 ON PAGE 1414.

PRICE DEP. EX. 1-18

CREDIT MEMORANDA

NAME Columbia Center Kennewick, Washington

Date Source	Comments or Sundry Information
6-1-67 AP: ws (Cont.)	(6) Mr. Allison inquired about Tekwila. I told him that just today we had worked out a lease with Mr. Forsyth. He then inquired as to whether we would be more interested in a branch in the retail area of Southcenter or the industrial area of Andover Park. I told him that our experience favored the retail location, but that other banks appeared to have had good success in industrial areas.

PRICE DEPOSITION EXHIBIT 1-19 IS REPRODUCED AS GX J-37 ON PAGE 1413.

PRICE DEPOSITION EXHIBIT 1-20 IS REPRODUCED AS GX J-36 ON PAGE 1412.

PRICE DEPOSITION EXHIBIT 1-21 IS REPRODUCED AS GX J-35 ON PAGE 1411.

PRICE DEPOSITION EXHIBIT 1-22 IS REPRODUCED AS GX J-34 ON PAGE 1410.

PRICE DEPOSITION EXHIBIT 1-23 IS REPRODUCED AS GX J-33 ON PAGE 1409.

PRICE DEPOSITION EXHIBIT 1-24 IS REPRODUCED AS GX J-30 ON PAGE 1406.

PRICE DEPOSITION EXHIBIT 1-25 IS REPRODUCED AS GX J-28 ON PAGE 1404.

PRICE DEPOSITION EXHIBIT 1-26 IS REPRODUCED AS GX J-27 ON PAGE 1403.

PRICE DEPOSITION EXHIBIT 1-27 IS REPRODUCED AS GX J-26 ON PAGE 1402.

PRICE DEPOSITION EXHIBIT 1-28 IS REPRODUCED AS GX J-25 ON PAGE 1401.

PRICE DEPOSITION EXHIBIT 1-29 IS REPRODUCED AS GX J-24 ON PAGE 1400.

PRICE DEPOSITION EXHIBIT 1-30 IS REPRODUCED AS GX J-23 ON PAGE 1399.

PRICE DEPOSITION EXHIBIT 1-31 IS REPRODUCED AS GX J-22 ON PAGE 1398.

PRICE DEPOSITION EXHIBIT 1-32 IS REPRODUCED AS GX J-21 ON PAGE 1397.

PRICE DEPOSITION EXHIBIT 1-33 IS REPRODUCED AS GX J-20 ON PAGE 1396.

PRICE DEPOSITION EXHIBIT 1-34 IS REPRODUCED AS GX J-19 ON PAGE 1395.

PRICE DEPOSITION EXHIBIT 1-35 IS REPRODUCED AS GX J-17 ON PAGE 1393.

PRICE DEPOSITION EXHIBIT 1-36 IS REPRODUCED AS GX J-18 ON PAGE 1394.

PRICE DEPOSITION EXHIBIT 1-37 IS REPRODUCED AS GX J-16 ON PAGE 1392.

PRICE DEPOSITION EXHIBIT 1-38 IS REPRODUCED AS GX J-15 ON PAGE 1391.

PRICE DEPOSITION EXHIBIT 1-39 IS REPRODUCED AS GX J-13 ON PAGE 1389.

PRICE DEPOSITION EXHIBIT 1-40 IS REPRODUCED AS GX J-14 ON PAGE 1390.

PRICE DEPOSITION EXHIBIT 2 IS REPRODUCED AS GX K-3 ON PAGE 1433.

PRICE DEPOSITION EXHIBIT 3 IS REPRODUCED AS GX K-2 ON PAGE 1432.

PRICE DEPOSITION EXHIBIT 4 IS REPRODUCED AS GX K-73 ON PAGE 1593.

PRICE DEPOSITION EXHIBIT 5 IS REPRODUCED AS GX K-79-C ON PAGE 1650.

PRICE DEPOSITION EXHIBIT 6 IS REPRODUCED AS GX K-36 ON PAGE 1514.

PRICE DEPOSITION EXHIBIT 7 IS REPRODUCED AS GX K-70 ON PAGE 1573.

PRICE DEPOSITION EXHIBIT 8

INFORMATION MEMORANDA

NAME Columbia Center National Bank BRANCH

Date Source	Comments or Sundry Information
5/21/71 CRC/mt	This afternoon, we had a meeting attended by Mr. Stowell, Mr. Buck, Mr. Shannon, Mr. Mangels and Mr. Lockwood to review our present loans and our general policy regarding overlines from the Columbia Center National Bank, particularly as they related to the Neal Lampson Enterprises. At the present time, we have overlines totaling $394,500, and the Columbia Center National carries $91,600, for a total of $486,100. The particular application which brought this matter to a head was the refinancing of an existing loan to Columbia Packers, Incorporated. We received three different applications during the past week in connection with one crane. The first was to rewrite and substantially increase our loan to Columbia Packers (see memo of May 19). The second application was for $160,000 which was Lampson and Loney as partners. This was also declined. The third application was for a $120,000 loan to Dean Loney to be secured by the crane.

Date Source	Comments or Sundry Information
5/21/71 CRC/mt	The committee agreed this was not a proper loan to Mr. Loney who is Chairman of the Board, an attorney and is certainly not knowledgeable in this field. It was the conclusion of the committee that we should treat Columbia Center in the same manner as we would a branch, and it was their further opinion that this was not a proper bank credit, and we should reject it on that basis. I have talked to John Horning and told him we were not interested in the credit based on (1) the lease offered is unacceptable from a credit standpoint, (2) the residual would be higher than the 40% agreed to in our formula, (3) considering Mr. Loney's occupation and position with the bank, a loan secured by a crane is really not a proper bank credit. I told John this matter had been discussed with Mr. Stowell and Mr. Buck, and, if Mr. Loney had any questions about our feelings on the matter, he could feel free to talk to them. Before rejecting this loan, I talked to Mr. Shannon, and we agreed I would not offer them any counter proposal at this time feeling that the next move was up to them. It is entirely possible that we could put together a proper credit when the crane and the new power unit and tracks have been delivered to Vancouver and assembled. If at that time they could supply us with paid receipts for the labor and materials for purchasing and installing the power unit, it would be entirely proper for us to consider credit to Columbia Packers, Inc., the present owners of the crane.

PRICE DEPOSITION EXHIBIT 9 IS REPRODUCED AS GX I-4-d ON PAGE 1356.

PRICE DEPOSITION EXHIBIT 10 IS REPRODUCDD AS GX I-5 ON PAGE 1358.

PRICE DEPOSITION EXHIBIT 11 IS REPRODUCED AS GX I-4-e ON PAGE 1357.

DEPOSITION OF DEAN W. LONEY
TAKEN AUGUST 18, 1972

* * * *

DIRECT EXAMINATION

BY MR. VERVEER:

Q. Please state your name and address for the record.

A. Dean W. Loney; mailing address, P.O. Box 6125, 300 West Kennewick Avenue, Kennewick, Washington, 99336.

Q. And what is your profession?

A. I am admitted to the practice of law in the State of Washington.

Q. And are you representing yourself as counsel here this morning?

A. Yes.

Q. Have you any connection with the Columbia Center National Bank?

A. Yes.

Q. What is that?

A. I own some stock in the bank and I am a member of the Board of Directors and I am chairman of the Board of Directors.

Q. Did you have any role in the organization of the bank?

A. Yes, I served as agent.

Q. What does that entail?

A. Between the time the request was made and the actual organization was formed, the agent is the person who communicates and speaks with the Comptroller of the Currency and represents the proposed organizers.

Q. When did you first become acquainted with Andrew Price?

A. I don't know.

Q. Would the end of March 1967 be about right?

A. Well, I am sure I was either introduced or reintroduced to him about that time. I believe I met him before this thing. I am not sure.

Q. If you met him before, had you had any continuing contact or relationship with Mr. Price before that time?

A. Not with Mr. Price.

Q. Had you had any relationships with the National Bank of Commerce prior to the end of March, 1967?

A. Yes.

Q. What was that relationship?

A. My firm is local counsel for the Kennewick branch.

Q. Did you conduct any banking business with the National Bank of Commerce?

A. As a customer of the bank, yes.

Q. Would you explain or describe briefly the events that surrounded the submission of your initial charter application to the Comptroller of the Currency?

A. Well, insofaras—I presume you are asking with specific reference to the N.B.C. people?

Q. That is right.

A. I had a conversation with Mr. Beavers about the Center and the interest of Allied Stores in having a bank in the Center and Mr. Beavers said that the National Bank of Commerce would encourage the formation of a bank there and asked me if I would be in a position to act as an agent.

Q. Prior to your conversation with Mr. Beavers, did you have any intention of attempting to establish a bank in Columbia Center?

A. Yes, it was discussed several years before. I had, off and on I have been personal counsel to Don Shirwood and Don was the owner of the property.

Q. But it would be fair to say that the motive force behind the submission of the initial charter application and your involvement in that regard sprung from your conversation with Mr. Beavers?

MR. HARTMAN: I object, a leading question.
MR. VERVEER: I will rephrase the question.
THE WITNESS: All right.

BY MR. VERVEER:

Q. (Continuing) How would you characterize the influence of Mr. Beavers' discussion with you and your eventual participation in the submission of the charter application?

A. Well, it was an important factor.

Q. Was it the most important factor?

A. No.

Q. What was the most important factor?

A. I wanted to do this.

Q. What was the outcome of your initial application?

A. It was rejected.

Q. When did that occur?

A. There was a telegram—the date escapes me. Perhaps you might know yourself.

Q. Would it have been roughly in September 1967?

A. That is a possibility, yes.

Q. Did any official of the Office of the Comptroller of the Currency explain to you why the charter was rejected?

A. Yes.

Q. Who did that?

A. I am not sure whether it was Mr. Leaf or Mr. Deshazo.

Q. You can't recall which of those two gentlemen it was?

A. Well, it may well—what I can't recall is whether I also talked to Mr. Deshazo. I am sure I talked to Mr. Leaf.

Q. Where did you talk to Mr. Leaf?
Where was the meeting held?

A. My memory is it was by telephone.

Q. A telephone conversation?

A. Yes.

Q. Do you know about when the telephone conversation took place?

A. It would have been very close in time to the receipt of the telegram.

Q. And what reasons did Mr. Leaf give you for the rejection of the charter application?

A. That he was convinced the bank would fail.

Q. Did he give—

A. (Interposing) I should not say "convinced the bank would fail", but had little chance to succeed and in that regard Mr. Davis, who was the field investigator, expressed to me at the time of the investigation his inability to appreciate that that sage brush would ever become a city or an area.

Q. Did Mr. Leaf ever give you any other reasons for rejection of the application?

A. Not to my knowledge; not to my recollection.

Q. To your knowledge did Mr. Leaf provide any explanation of the rejection of the charter to any of the other prospective organizers?

A. To any of the other prospective organizers?

Well, of course, he might have without my knowledge.

Q. But to your knowledge?

A No.

Q. To your knowledge did Mr. Leaf afford any explanation to any officers of the National Bank of Commerce?

A. I believe that some people from the National Bank of Commerce talked to Mr. Leaf about it, yes, and I would be sure he must have told him.

Q. What people in the National Bank of Commerce spoke to Mr. Leaf about it?

A. Well, I know this only by hearsay but—

Q. (Interposing) Well, just on information and belief.

A. I would think probably Mr. Buck and/or Mr. Price.

Q. Could you characterize the relationship between the National Bank of Commerce and the prospective organizers of what became the Columbia Center National Bank in the period between your becoming acquainted with Mr. Andrew Price and the period of the rejection of the first charter application?

A. Could I? Your question is, could I put a label on what our relationship was with the bank?

Q. Or could you generally describe the sort of relationship that existed?

A. A good, close working relationship.

Q. In your opinion were efforts made on the part of both parties to maintain the independence of organizing group of the Columbia Center National Bank?

A. Well, I don't know what you mean by "independent". We talked, I talked, to the people at the N.B. of C. about the organizers. I solicited all the advice and assistance I could get from the N.B. of C.

This is, perhaps, volunteering, but there never was any doubt in my mind but what the organizers were independent.

Q. Did you ever have any discussion with anybody from the National Bank of Commerce in the period prior to the Comptroller's rejection of the charter application which involved the necessity of maintaining the independance of the prospective organizers or the necessity of maintaining an arm's length posture in your dealings?

A. Yes.

Q. You did?

With whom did you have such discussions?

A. Well, in the very initial stages I actively sought an understanding of our relationship, what did the N.B. of C. expect of me, what did they expect of the organizers, what did we expect of them, and I believe the very first understanding I had occurred with Mr. Moen and Mr. Buck.

Q. And what was that understanding?

A. Well, this was later, this understanding was later, reduced to writing, and the written document expresses it better than I could do myself, but that understanding was, in essence, from the very first with Mr. Moen and as far as I am concerned, exists today unchanged.

Q. What was the understanding?

A. May I just refer you to the document?

MR. TORRE: Let's go off the record.

(Off the record colloquy.)

MR. VERVEER: Back on the record.

BY MR. VERVEER:

Q. Would you identify the document to which you are referring?

A. Yes, it is a letter from Mr. Buck addressed to me under date of December 29, 1967.

Q. And it is your statement that this letter embodies the understanding or the position of the parties as it existed almost from the very beginning and as it still exists today?

A. Yes, subject to this one qualification, if I may.

Q. Yes, please.

A. Memory is an awful tough thing but, initially, I am talking now about before the rejection—

Q. (Interposing) Yes.

A. (Continuing) —there were to be no directors as stockholders or as officers of the C.C.N.B. That is as I remember it.

Under the letter of December 29th, at that time N.B. of C. was willing that the stockholders be members of their board.

My recollection is that before the turn-down they were not.

Q. But otherwise the letter does embody, from your perspective, the understanding from the beginning and the understanding which carries through to this moment?

A. Yes, sir.

Q. Your understanding, and, as far as you are aware, the understanding of the National Bank of Commerce?

A. I can't speak for them but I would see no reason to have it differently.

Q. Mr. Loney, have they ever told you that they don't subscribe to that document any longer?

A. No.

Q. No one ever has?

A. No.

Q. If I might backtrack a moment, Mr. Loney, what was your reaction when Mr. Beavers first spoke to you

about the possibility of becoming involved in the formation of a bank at the proposed Columbia Center?

A. Enthusiasm.

Q. Were you at all surprised that the branch manager of the bank, existing bank in Kennewick, would approach you and suggest the possibility to you?

A. I can't really say. I might have been, I don't have a recollection.

(Brief pause.)

That is my answer.

Q. Did at that moment, or did it later, occur to you that Mr. Beavers might be suggesting something unusual in that the National Bank of Commerce already had a banking office within approximately five miles of the site of the proposed Columbia Center?

A. Well, in answering your question, my thought processes today are the result of my knowledge today, so that it is hard to go back and say what did I think then. It is obvious to me that that is a great place for a bank. I believe our town is going to be there.

Q. Did you have any questions based upon the possibility that the National Bank of Commerce branch manager was suggesting to you the possibility of organizing a competing bank?

A. Well, whatever thoughts I had at that time, I immediately acted upon them by visiting with the people over here, Mr. Buck and Mr. Moen, and received answers to every question I had.

Q. And did I correctly understand you to say that Mr. Buck and Mr. Moen supplied what you regarded as a thoroughly satisfactory explanation for their interest in helping you to organize a national Bank at Columbia Center?

A. Yes.

Q. Mr. Loney, how long have you lived in the Tri-City area?

A. Since 1949.

Q. For the record, what is the Tri-City area; what are the Tri-Cities?

A. The three towns of Kennewick, Richland and Pasco.

Q. And did you have any business ventures in that area aside from your law practice?

A. Well, you mean, have I made investments in the area?

Q. Yes, sir.

A. Yes.

Q. In the process of making your investments in the area, have you had occasion to visit banks and seek to arrange credits?

A. I have borrowed money from the N.B. of C. from time to time; on several occasions sought to borrow funds for my clients.

Q. Are you familiar with the large cross-section of the business community of Pasco, Kennewick and Richland?

A. Yes.

Q. Are you familiar with the prior—

MR. VERVEER: Strike that.

BY MR. VERVEER:

Q. (Continuing) Prior to 1967 were you familiar with the bankers in Kennewick, Pasco and Richland?

A. Did I know the bank people?

Q. Yes, sir.

A. Yes.

Q. And were you familiar with the banks in the Tri-Cities area?

A. Yes.

(Brief pause.)

BY MR. VERVEER:

Q. Mr. Loney, were you familiar with a bank called the Mid-Columbia Bank of Pasco?

A. Yes.

Q. Were you familiar with a bank called the Tri-Cities National Bank?

A. Yes.

Q. Were you familiar with the Kennewick National Bank?

A. Yes.
Q. Were you familiar with the Bank of Richland?
A. Yes.
Q. Could I ask you in a general way what has become of those banks?
A. They have been—they have changed hands.
MR. HARTMAN: They what?
THE WITNESS: I don't know how to answer it.
MR. TORRE: We didn't hear you.
MR. HARTMAN: We didn't hear you.
A. (Continuing) They changed hands.

BY MR. VERVEER:

Q. How have they changed hands?
A. I don't know. Do you mean cash or stock?
Q. No, sir, I mean by one set of local owners of the bank selling to another set of local owners?
A. I think I know who the successors are, if that is what you are asking.
Q. Yes, sir.
A. Yes, Peoples acquired the Columbia, as I recall. Old National Bank acquired the other three.
Q. Did you know any shareholders in those banks, any of the local shareholders of those banks?
A. Yes.
Q. Did you know any of the people who were directors of those banks?
A. Yes.
Q. Did you know any of them well?
A. Yes.
Q. Do you know a man named DeWitt Wallace?
A. No. I know of the name but I have never known him to my knowledge.
Q. Have you ever met Joshua Green?
A. Of course, I know who he is, but I don't remember ever having had the opportunity.
Q. Mr. Loney, in 1967, at the time you spoke to Mr. Beavers, did you have any impression or opinion about the four banks that we have just discussed which subsequently come as you have testified, were acquired by Peoples National Bank and the Old National Bank?

MR. HARTMAN: I object to the vagueness of that question.

BY MR. VERVEER:

Q. (Continuing) Mr. Loney, do you understand the question?

A. Well, I am sure I had an opinion about them, but I don't know what you mean, really.

Q. Mr. Loney, did you have an impression that these four banks might have been organized as entry vehicles for the two larger banks, Peoples National Bank and the Old National Bank, into the Tri-Cities area?

A. Only about the Kennewick National. I had no such opinion or belief about the bank at Richland or the Tri-City National or the Mid-Columbia, but I did not know anything about them.

Q. Have you ever heard any talk in the business community of the Tri-Cities about these banks, specifically with reference to this matter we are discussing?

A. The sponsorship of the Kennewick National by the Old National, that is what stands out in my mind.

I was asked by a group of people to organize what later became the Bank of Richland and, if it is a fact, I was unaware that the Old National Bank had anything to do with it and I was unaware that Peoples had anything to do with the Mid-Columbia. I thought the N.B. of C. was going to buy the Mid-Columbia.

Q. Why did you think that?

A. Well, you are going back in time now. Maybe I just thought they should. I don't know, really.

Q. With reference to the Kennewick National Bank, what was it that you either knew or—what was it that you knew about the Kennewick National Bank?

A. Well, weren't some of the—I didn't know anything about the Kennewick National Bank, really.

Q. What were the discussions in the business community that related to the Kennewick National Bank that you heard prior to 1967?

A. Before 1967?

Would K.N.B. be in existence then?

Q. I believe it was.

A. I couldn't give you an answer that would be meaningful.

I knew Howard Beste was chairman of the board and I knew that their correspondent was the Old National, and the bank's Chief Executive Officer was Jack—I can't remember his last name, I am sorry.

You know, you get an impression but why you have an impression, you don't know.

Q. Mr. Loney, was it your impression at the end of March 1967, that any bank in the Tri-Cities area was sponsored or promoted or strongly assisted by a larger state-wide bank for the purpose of assisting as an entry vehicle for that bank?

A. No, I had no belief one way or another about it.

Q. Mr. Loney, you referred a few moments ago to a document offered by Mr. Robert F. Buck, and sent to you, and I believe you actually have a copy of the original, is that correct?

A. I have the original, yes.

Q. Is that part of the material that you produced in answer to our subpoena duces tecum?

A. Yes, sir.

Q. And did all that material come from the files of the Columbia Center National Bank?

A. Well, actually, they are my files.

Q. Were these files under your custody and control?

A. Yes.

Q. Mr. Loney, are there any National Bank of Commerce files in the files that were under your custody and control?

A. Not to my knowledge.

Q. Mr. Loney, I will ask you to look at these files. Are these part of the files that you produced today?

A. Yes.

Q. I will ask you to look at the top document which is labelled "Credit Memoranda, Columbia Center National Bank", 10-0-3-69, which I assume is a transposition—I am sorry, 1-03-69—I assume that is a transposition—I am sorry, 1-03-69—I assume that is a transposition for 1-30-69, with the initials F.A.A.

Do you recognize those to be the files of the Columbia Center National Bank?

A. Well, I recognize that this is the Columbia Center National Bank folder, yes, and I got it from the Columbia Center National Bank.

Q. Is there a man with the initials F.A.A. employed by the Columbia Center National Bank?

A. No.

Q. Do you know a man named Frank A. Abersfeller?

A. Yes.

Q. Who is Frank A. Abersfeller?

A. He is an official of the N.B. of C.

Q. Does this appear to you to be an original document?

A. Yes.

Q. Original writing on it?

A. Yes.

Q. Are there initials on this document in ink?

A. Yes.

Q. Can you make out those initials?

A. This one?

Q. Yes.

A. That is F.A.A.

Q. I show you another document from the same file, labeled "Columbia Center National Bank", and the date-source of 1-7-69 and the initials R.F.B., and ask you if you recognize this to be a document of the Columbia Center National Bank?

A. Well, I know what these are now.

Do you want me to explain it to you? I mean, we can shorten this up considerably.

Q. I would be pleased to have you shorten it up.

A. Okay, the president of our bank, Mr. Horning—

Q. (Interposing) Yes?

A. (Continuing) —was put on the payroll of the National Bank of Commerce before we opened the door, before our bank opened. Right?

A. Yes, sir.

A. He was actually over here in the head offices. I don't know where his desk was.

MR. TORRE: Over here is Seattle?

THE WITNESS: Yes.

MR. TORRE: At the head offices of N.B. of C.?

THE WITNESS: Right.

A. (Continuing) When the C.C.N.B. was formed everything from the N.B. of C. files relating to Columbia Center became a part of the Columbia Center records, so that these are, starting with Mr. Horning's memos, in going through I find they go clear back to 1965—1961.

BY MR. VERVEER:

Q. Sir, are you telling me that there are National Bank of Commerce files now under the custody and control of the Columbia National Bank and that these date back to 1961?

A. I am telling you—

MR. HARTMAN: (Interposing) I object to the form of the question.

BY MR. VERVEER:

Q. Sir, are you telling me that there are National Bank of Commerce files under the custody and control of the Columbia Center National Bank which date back to 1961?

A. The answer to that question is "yes", subject to the explanation I have just given you.

Q. Would you please keep it open to that page.

A. Yes.

Q. Thank you.

MR. TORRE: Off the record.

(Off the record colloquy.)

MR. VERVEER: Back on the record now.

BY MR. VERVEER:

Q. (Continuing) Mr. Loney, referring again to the letter of December 29, 1967, from Mr. Robert F. Buck to yourself, did you say before that you have the original of that letter?

A. I do.

Q. Would you refer to the second page of that letter, please?

For the record, what date is at the top of the second page of that letter?

A. I see a different date. It is December 21, 1967.

Q. Dispite the descrepency in the date on the first page and the date on the second page, is this a true and accurate copy of this letter which came from your files?

A. Your question is:

Is it a true and accurate copy?

It is the letter from my files.

MR. VERVEER: Thank you. I would like this marked as Loney Exhibit No. 1.

(Loney Exhibit No. 1 marked for identification.)

BY MR. VERVEER:

Q. Mr. Loney, have you had an opportunity to look at this letter recently?

A. Yes.

Q. And you are familiar with its contents?

A. Yes, I have read it today.

Q. Mr. Loney, what prompted the writing of this letter?

A. I believe, as it speaks, that it was written to clarify the relationship.

Q. Why was it necessary to clarify the relationship?

A. Why was it necessary?

Well, I believe we wanted to have no misunderstandings with anybody, including the Comptroller.

Wait a minute, oh, sure, this was to clarify it and put to rest once and for all the relationship and to spell it out for the Comptroller as well as anyone else.

MR. VERVEER: Will you read the answer?

(Preceeding answer read by the Reporter.)

BY MR. VERVEER:

Q. Why was it necessary to spell it out once and for all for the Comptroller?

A. It reminds me of an extremely sore spot.

The Comptroller had indicated we were not telling the correct facts. He did not tell me this but it came to me. It is one of the few times I came close to losing my temper.

Q. You say that the Comptroller accused you of being dishonest?

A. Well, he did not tell me that but it was suggested. I received information that he suggested that this was the case.

Q. How did you receive the information?

A. One of the organizers of our bank called me and told me this.

Q. Which organizer of your bank?

A. Mr. Cochrane.

Q. Did Mr. Cochrane indicate how he had received the information?

A. Yes, through Senator Jackson's office.

Q. What did Mr. Cochrane tell you?

A. Well, Micky Cochrane was a brick hod carrier and a construction superintendent so that he has a classic way of speaking and I will eliminate a lot of the words he used but he said, "Hey, have we got an agreement with the National Bank of Commerce they are going to buy us?" and I said, "No," and he said words to the effect that "Senator Jackson tells me we do and that is why the Comptroller won't let us organize a bank and that we did not tell the truth to the field representative."

Q. Did anyone else besides Mr. Cochrane ever relate that information to you?

A. Well, following his giving me that information I am sure I discussed it with Mr. Buck, as well as others.

Now, I can't say what, if anything, they might have told me.

Q. Let me ask you once again:

What the point was that the Comptroller, upon which the Comptroller felt he had not been told the truth?

A. I don't really know except some kind of an agreement with the Bank, with the N.B. of C.

Q. And where was there a problem with that?

A. Pardon me?

MR. VERVEER: Strike that.

BY MR. VERVEER:

Q. What sort of agreement between the proposed new bank and the National Bank of Commerce?

A. Well, the word didn't come to me on what the agreement was; it was just that there was one.

Q. An agreement with respect to what?

A. To buying the C.C.N.B.

Don't you have—isn't there something on the application that says this, something on the application, paragraph seven of the application, which says, "Do you have an agreement with somebody to buy you out?"

I think we answered that "no", on both cases and when he raised this issue we sent him this.

Q. Were you ever told what the Comptroller's objection was?

A. What the Comptroller's objection was?

Q. Yes, sir.

MR. TORRE: With respect to that seventh paragraph of the application.

BY MR. VERVEER:

Q. (Continuing) That paragraph.

A. Well, I think the Comptroller—recognizing this is about fifth-hand now, Mr. Leaf, nor did anyone from the Comptroller's Office tell me this.

What Mr. Cochrane said was that in our application we did not have an agreement with the National Bank of Commerce and the Comptroller said we did have.

Q. Was the Comptroller's objection that there was a misrepresentation in your statement?

A. Well, this is what I would conclude from that statement.

Q. Is this letter that you are presently discussing an effort to obviate that objection?

MR. HARTMAN: Is that Loney Exhibit No. 1 you are referring to by "this letter"?

MR. VEREER: Yes.

MR. HARTMAN: All right.

A. This letter spells out what the understanding was in the beginning and the understanding at the end and

I, perhaps, overacted, like maybe anybody would do when the suggestion is made, and I wanted it clearly understood what the relationship was and, if necessary, we were going to be sealed in wax and put the blood of the chicken on it.

The slightest suggestion that the facts were not as represented leads me to be disturbed.

Q. Do you know what led the Comptroller of the Currency to formulate this opinion?

A. No, and I honestly don't know what his opinion was. As I say, I got it third-hand.

Q. Were you ever told why, by the Comptroller of the Currency why, your initial charter application was rejected?

A. Yes.

Q. What reason was given to you?

MR. HARTMAN: Hasn't that already been asked and answered?

THE WITNESS: Well, yes, I am sure I did answer it.

A. My recollection is he told me he did not believe it could succeed—the bank.

BY MR. VERVEER:

Q. Is that statement consistent with the rejection based upon the Comptroller's opinion that there were misrepresentations in the application?

A. I guess so. If he thinks everybody is a bunch of liars and cannot run a bank, well, I guess so. I don't know about this misrepresentation. What he told me was he did not think it would succeed.

Q. Does it appear to you that the Comptroller of the Currency told you one thing and Senator Jackson's office something else?

A. I only know what he told me. I don't know what he told Senator Jackson.

Q. Does it appear from what you have told us earlier today that the Comptroller's Office told you one thing and told Senator Jackson's office something else?

A. I wouldn't conclude, I will not conclude, the Comptroller is telling anything improper, or doing anything improper.

MR. TORRE: That is not the question.

THE WITNESS: Well, gentlemen, I don't know what he told Senator Jackson's office and I am not going to guess.

BY MR. VERVEER:

Q. How well do you know Mr. Cochrane?

A. How well do I know him?

Q. Yes.

A. I have known him 20 years and represented him.

Q. Do you have full confidence in Mr. Cochrane's integrity?

A. Yes.

Q. Do you have full confidence in his mental competency?

A. Yes, subject to this one explanation that I think applies to all human beings, and that is the ability to hear is given to you by the Lord but the art of listening is something you have to develop.

I don't know anybody that listens well, including myself.

Q. Based on your long familiarity with Mr. Cochrane, did you believe, when he conveyed that message to you, and do you believe now that he accurately conveyed to you the substance of the message which he received from Senator Jackson's office?

A. No, I think what he told me—you see, people react to key words and I did make an investigation and I think I know now what happened. I think he just heard the word "misrepresentation", or something, and turned off his hearing aid and from then on he was thinking what he was thinking and wasn't listening.

Q. For the record, Mr. Loney, does Mr. Cochrane wear a hearing aid?

A. No, that is just a manner of speaking.

Q. What sort of an investigation did you make and here I am referring to the investigation which you just mentioned?

A. Well, I tried to find out why anybody would think we were not telling the truth.

Q. How did you go about this investigation?

A. Well, you try to run down where in the blue eyed world it came from.

Q. What steps did you take?

A. Gosh, I don't remember now, the same steps that, you know, asking questions.

Q. Of whom did you ask questions?

A. I don't have the vaguest idea at this moment. I think Davis, yes.

Q. And for the record, who is Davis?

A. Leonard Davis was an employee of the government and I believe he was in the Comptroller's Office, a field representative or field investigator.

Q. Was Mr. Davis the man who investigated your application at field level?

A. Yes.

Q. And you just testified you contacted Mr. Davis in the process of your investigation?

A. Yes.

Q. What did Mr. Davis say to you?

A. Well, I can't remember what he said but the gist of it was that if the Comptroller got the impression that there was something in error it came from Davis.

Davis, where he got the idea, the Lord only knows. When he started investigating people and asking questions, had been assured that the National Bank of Commerce would underwrite the bank and would buy it and that there was going to be such an agreement, but that he would not have to worry about the fact that this was out there in the sage brush country and that only the jack rabbits would use it, because if money was lost it was going to be N.B. of C. money, and the organizers explained to him in great detail that to their knowledge they had no agreement with N.B. of C. and he comes back and says, "What is going on?"

Now, that is what I learned.

MR. VERVEER: Could you read back that answer, please?

(Preceeding answer read by the reporter.)

BY MR. VERVEER:

Q. To whom did Mr. Davis come back and ask, "What is going on?"?

A. That was kind of an unintelligible answer.

I formed an opinion from my conversation with Davis and my opinion is this, so that what I am telling you now is my opinion.

Okay?

Q. This isn't what Mr. Davis told you?

A. This is the opinion I formed from what he told me, which is different. I don't remember what he told me. All I remember is my opinion.

That he went into this investigation without being concerned too much about the economic success of a bank this far from the population center. The reason that he did not have any particular concern was that he was laboring under the impression that it would be financially supported by the—I am assuming the—N.B. of C.; and in his investigation he talked with each organizer and one of the questions he asked each organizer was, "Do you have an agreement with anybody to, well, in essence, buy you or support you or financially support you?", and each organizer said, in essence, "No, I am putting up my money at risk believing this is a good location and I want to own the stock."

Mr. Davis felt that somehow somebody had mislead him.

Q. Mr. Loney, in your earlier answer you said something about Mr. Davis came back and said, "What is going on?"

To whom did he ask that question?

A. This again was my opinion. I can see Davis going back to Leaf or Deshazo or somebody and saying, "What is going on here? These guys aren't telling me the truth."

But, I don't know that he did this. I just went through these mental gymnastics to rationalize it in my own mind.

Q. In the process of your discussion with Mr. Davis, did you ask him how he formed his opinion that the National Bank of Commerce was involved to the extent of having an agreement with the organizers to purchase the bank eventually?

A. I don't recall asking that. The reason I don't recall is I have no recollection today of his giving me an explanation of having that opinion.

Q. Did you ask him?

A. I don't remember asking him. If I did ask him, I did not get an answer that registered with me.

Q. You have testified, have you not, that you were angry when you heard that the honesty of your answer had been questioned, and that you were anxious to conduct an investigation and discover—

A. (Interposing) Why.

Q. Why it happened?

A. You bet.

Q. But you did not ask Mr. Davis how he formed that opinion?

A. I did not say that.

Q. I am sorry, what did you say?

A. I said I don't have any recollection today of his giving me an answer that registered. I don't remember his explaining to me how he got it.

Q. Do you regard yourself as a methodical lawyer?

A. My self image?

I have a reaction to the word "methodical". That reminds me of a guy with flat feet.

(Brief pause.)

A. (Continuing) Are you waiting for an answer?

Q. Yes, sir.

A. No.

Q. Today, looking back on the situation you have just described, does it seem probably to you that you would have contacted Mr. Davis under the circumstances you have just related and not asked him how he formed this impression?

A. All I can tell you is that I remember his answers. I don't remember my questions. I remember the gist of what he told me.

BY MR. TORRE:

Q. Mr. Loney, your memory is getting very selective. You remember half of a conversation, and not the other half?

Are you sure you don't remember?

A. Well, as a trial lawyer, you don't remember what you ask a guy because you are interested in his answers. You are looking for the information he gives you, and what I am telling you is that I do not remember—

Strike that—he did not give me a satisfactory explanation for where he got that information and, so, I put down in my best sub-conscious that he didn't have a good basis for that information.

(Brief pause.)

BY MR. VERVEER:

Q. Mr. Loney, in the course of the investigation you have been describing, did you contact anyone besides Mr. Davis?

A. Talked to N.B. of C. people.

Q. Who did you speak with at N.B. of C.?

A. Well, principally, Bob Buck, because it was Bob with whom I dealt during this period of time almost exclusively.

Q. Mr. Loney, were you also the lawyer for the organizing group?

A. Well, I did the legal work and acted as agent.

Q. In that regard did you have occasion to look up the law on the organization of banks?

A. Yes.

Q. Did you have occasion to look up the law on the establishment of branch offices?

A. No.

Q. Mr. Loney, after you learned that the seventh paragraph of the application had been the cause of some difficulty in the Comptroller's office, did you have occasion to look up the legal background of that inquiry, either before or after?

A. Well, so that I don't mislead you in any way, I personally did not concern myself with the things that—the rights or duties of a bank like the N.B. of C., but I did talk to Mr. Moen about what they could or could not do so that in that sense I investigated and particularly with reference to paragraph seven.

Q. What did Mr. Moen advise you about this paragraph seven?

A. Well, he did not advise me about paragraph seven, but he advised me, as this letter exhibit 1 talks about, where it says, "upon the advice of counsel we have been cautious, excessively cautious, to avoid this."

In other words, having any written or oral understanding.

Q. Do you know what the advice of counsel to make them cautious was?

A. Well, I know from my discussions with Mr. Moen. He felt it would be improper to have an agreement or understanding of this nature.

Q. On what basis?

A. You mean, why did he have that opinion?

BY MR. TORRE:

Q. What was the legal basis of that opinion?

A. The State law.

Q. What state law?

A. Well, I must confess to you I don't know what state law this is. Believe it or not, I have never had occasion to read it.

Q. Are you a member of the bar of the State of Washington?

MR. MOEN: Just a moment. I will object if you are going to switch interrogators.

MR. VERVEER: Mr. Moen, I thought Mr. Loney was representing himself in this deposition?

MR. MOEN: Nevertheless, I interpose an objection.

THE WITNESS: I object to your suggesting I might not have passed the bar.

MR. TORRE: No, I am not denograding your ability as a lawyer or anything like that.

BY MR. TORRE:

Q. (Continuing) Are you a member of the bar of the State of Washington?

A. Yes.

Q. Didn't you ask him what his legal basis was?

A. Sure, I did.

Q. What did he tell you?

A. That he believed that the State Law prohibited this.

Q. And didn't you say what state law?

A. Well, I knew what state laws he was talking about.

Q. All right, what were those state laws?

A. You mean the citation?

Q. You don't have to cite me the code section but you can tell me what the law is that makes that improper, as you said.

THE WITNESS: Do you have a copy of it with you?

MR. MOEN: I don't have a copy of the statute.

A. I don't remember, counsel. I don't honestly remember. It is the code section in the banking act that talks about branching.

MR. TORRE: Let's go off the record for a minute and I will get a copy of the code.

(Off the record colloquy.)

MR. TORRE: All right, back on the record. Will you read the last question, please?

(Last question read by the reporter.)

BY MR. TORRE:

Q. What is the law that Mr. Moen cited to you as making it improper for the National Bank of Commerce to agree to acquire the Columbia Center National Bank, prior—

MR. MOEN: Interposing) Now, just a minute. That isn't what was said. Rephrase your question.

MR. TORRE: What is your impression.

MR. MOEN: You said I said it was improper to acquire the Columbia Center National Bank.

MR. TORRE: To agree to acquire prior to its charter.

MR. MOEN: All right.

MR. TORRE: Does that state the question properly?

MR. MOEN: All right.

A. Well, let me explain it this way.

Mr. Moen I consider to be a competent lawyer in the banking field and particularly in this particular area. So, therefore, I did not question him on his legal opinion.

He indicated to me that it was his belief that under the code section 30.40 that this would be an improper activity for the—this is impropriety from the standpoint of the National Bank of Commerce, you understand. It wasn't something that would be improper from the standpoint of the Columbia Center National Bank.

So, he and his people are refraining from doing something improper.

BY MR. TORRE:

Q. What is the title of the heading under that code section?

A. "Branch Bank."

Q. Is that the only law cited to you as being the basis for his opinion?

A. Well, yes, recognizing he did not cite any law to me at all. He just told me that this was his opinion and I had no reason to question it because, even if I believed he was wrong, I was not counsel for the N.B. of C. and he was and his opinion controlled, and, so, I just didn't question him.

Q. There was nothing then that prevented you or the organizers of the Columbia Center National Bank, from your side of it, from agreeing with the bank as regarding an acquistion and having an understanding with the bank regarding future acquisition?

A. If there is something improper, I don't know.

Q. But to your knowledge there was nothing?

A. No.

Q. From your side?

A. No.

Q. However, Mr. Moen said from the side of the National Bank of Commerce he believed it violated the section of the Washington code that you just cited, is that correct?

A. Yes.

Q. To your knowledge the Comptroller of the Currency did not object to the fact that there was an understanding but only that there was a misrepresentation by not disclosing what he believed to be an understanding?

A. You say things, you know, and you trigger my memory.

Q. Is that true?

A. Yes.

Q. Now you can explain.

A. I do remember talking to Kenneth Leaf about this point and he told me in his opinion we could go out and have a bank agree with us on some kind of basis.

BY MR. VERVEER:

Q. Mr. Loney, will you please clarify for me what you have just said?

Kenneth Leaf was whom?

A. The Regional Director.

Q. Of what, sir?

A. The Comptroller of the Currency.

MR. VERVEER: Thank you.

BY MR. TORRE:

Q. Mr. Loney, do you have any idea who would raise an objection under the code section of the Washington code you have just cited to me against the National Bank of Commerce?

A. Yes, anybody.

Q. For?

A. You know, wanting to stop us.

Q. To your knowledge have any actions like that been brought in the State of Washington?

A. I think there have been.

Q. Would you specify, if you remember?

A. I thought there had been, yes.

Q. You don't remember the case name or the parties or the situations?

A. No.

Q. The time?

A. Isn't there some law suit pending somewhere where somebody has attacked the validity of the charter?

MR. TORRE: I don't know.

BY MR. VERVEER:

Q. Is it your impression that there is such a law suit here in the State of Washington?

A. Yes.

BY MR. TORRE:

Q. Are you, perhaps, referring to the Bank of California, a law suit involving movement of the branch of the Bank of California, or establishment of the branch of the Bank of California?

A. It very well could be.

Q. That is a large bank in Washington filed a suit against the Bank of California to prohibit it from establishing a branch?

A. No, the suit I am thinking of has to do with canceling the charter ab initio.

Q. A national charter or state?

A. National. I am trying to think who told me.

(Brief pause.)

MR. VERVEER: There is no reason to delay for that.

MR. TORRE: Off the record.

(Off the record colloquy.)

MR.VERVEER: On the record.

BY MR. VERVEER:

Q. Mr. Loney, do you recall telling me in an interview which the two of us had on May 24, 1972, that the prospect of eventual acquistion of the Columbia Center National Bank by the National Bank of Commerce was well understood by the National Bank of Commerce at the time the charter was granted?

A. No, I don't recall telling you that, but I am not sure I am understanding your question. Say that again, please.

Q. Was the prospect of the eventual acquisition of the Columbia Center National Bank by the National Bank of Commerce well understood by the National Bank of Commerce at the time that the charter was granted to the new bank?

A. Your question is now: was it?

I would say that consistent with Mr. Buck's letter of December 29, 1967, yes there wasn't any doubt in my mind that they wanted to eventually acquire it.

Q. Was the prospect of eventual acquisition understood by the Columbia Center National Bank at the time the National charter was granted?

A. By Columbia Center?

Q. By the organizers and the directors?

A. Not really. Sure, they knew that N.B. of C. was a good prospect to acquire it, yes.

Q. Was the prospect of eventual acquisition understood by the Comptroller of the Currency at the time the charter was granted?

MR. HARTMAN: I don't believe Mr. Loney is qualified to state his understanding.

BY MR. VERVEER:

Q. (Continuing) In your opinion did the Comptroller of the Currency understand the prospect that the National Bank of Commerce would eventually acquire the Columbia Center National Bank?

A. I haven't the vaguest idea what the Comptroller might think. I would not attempt to speak for him. We did not tell him this.

BY MR. TORRE:

Q. I have here a document dated July 12, 1968. It is on the letterhead stationery of Loney, Westland and Raekes, addressed to Robert F. Buck, and it is signed "Loney, Westland and Raekes", by you.

It is a three page document and I would like to ask you to examine it, if you will.

A. Yes, I have. It is my letter.

Q. Does this appear to be a true and authentic copy of this letter?

A. Yes.

Q. Do you recognize the handwriting in the margins?

A. No.

MR. TORRE: We would like to mark this Loney Exhibit No. 2, please.

(Loney Exhibit No. 2 marked for identification.)

A. (Continuing) You understand my letter did not contain any handwritten portions.

BY MR. TORRE:

Q. But for the handwritten markings, this is your letter?

A. Yes.

BY MR. VERVEER:

Q. Mr. Loney, directing your attention to paragraph No. 3, will you please read that for us, sir?

A. Yes, I have.

Q. Directing your attention to the second sentence of paragraph no. 3—

A. (Interposing) Yes?

Q. (Continuing) Will you read that, please, aloud?

A. Aloud?

Q. Yes.

A. "For instance, many of the steps taken initially will have a bearing on the long-range operation of the bank many years after it has changed from a unit bank to a branch bank."

Q. Sir, the date on this letter is what?

A. July 12, 1968.

Q. When did you receive the preliminary indication that the second charter application had been approved?

A. It must have been some time in June or July.

Q. Would it have been—Mr. Loney, how much money have you invested in the Columbia Center National Bank?

A. $15,000.

Q. How much time do you devote to the Columbia Center National Bank in the capacity as Chairman of the Board?

A. Well, we have a directors' meeting once a month that lasts maybe two hours. As chairman of the board that is all I serve.

Q. Do you receive a director's fee?

A. No.

Q. How much monetary return have you received on your monetary investment and your investment in time for the Columbia Center National Bank?

A. Well, I was paid for about half of my time in the formation. You mean this?

Q. No, sir, as an investor, how much of a return have you gotten, not in your capacity as the agent or attorney for the bank?

A. Nothing.

Q. When did Columbia Center National Bank open for business?

A. Was it 1968 or '9?

Q. Would it have been approximately August 1969?

A. Yes, August 1, 1969.

Q. So that in three years time your return on investment has been nothing?

A. Well, if you mean have I realized any gain on my stock, or any dividends?

Q. Yes, sir.

A. The answer is, no.

Q. Mr. Loney, would you say that the National Bank of Commerce has been very helpful to you and to the Columbia Center National Bank from the time when its initial organization was conceived up to the present?

A. Yes.

Q. Do the other directors, to your knowledge do the other directors, of the Columbia Center National Bank share that view?

A. They have no reason to think otherwise.

Q. Speaking for yourself alone, if everything else were equal and a determination were made to put the Columbia Center National Bank up for sale, would you sell to the National Bank of Commerce in preference to other bidders?

A. In preference?

Q. Everything else being equal.

A. You mean price and—

Q. Yes, sir, everything.

A. I would certainly think they would be entitled to buy, if the other things were all equal, yes.

MR. VERVEER: We have no further questions.

MR. MOEN: I would like to ask Mr. Loney a few questions.

CROSS-EXAMINATION

BY MR. MOEN:

Q. Mr. Loney, is N.B. of C. active in the management of the Columbia Center National Bank at the present time?

A. No.

Q. Does N.B. of C. have anything to do with setting your banking policies?

A. No, not the C.C.N.B. policies except the correspondent taking the overline.

Q. Does it have anything to do with hiring or firing of employees?

A. No.

Q. Fixing salaries?

A. No.

Q. Passing on your budgets?

A. No.

Q. Do they fix your interest rates?

A. No.

Q. Do they pass on your loans?

A. No.

Q. Or on your deposits?

A. Excuse me, I said, no, on passing on loans. To the extent the correspondent takes the override, they have to approve the loan they make, but they do not approve the loan we make.

Q. You don't submit to them a list of your loans?

A. Not to my knowledge.

Q. Do they pass on your credit risks?

A. Not to my knowledge.

Q. Is the National Bank of Commerce obligated in any way to buy your bank?

A. No.

Q. Do they have any commitment, to your knowledge, to any of your stockholders?

A. Not to my knowledge.

Q. Or to you personally?

A. No.

Q. Do you know if any of your stockholders are obligated in any way to sell out to the National Bank of Commerce?

A. No.

MR. MOEN: That is all I have.

MR. HARTMAN: I have no questions.

REDIRECT EXAMINATION

BY MR. TORRE:

Q. Mr. Loney, would you say that the involvement of the National Bank of Commerce in the operation of the Columbia Center National Bank was greater prior to the middle of 1971 than it is now?

A. Wait a minute, so that I understand you, the involvement of the bank in the management of the C.C.N.B.?

Q. In the operation and assistance.

You testified they did give you a great deal of assistance in setting up the bank and providing you with a president, Mr. Horning, is that correct?

A. Well, he was a former N.B. of C. employee, yes.

Q. And they recommended him to you?

A. They recommended him as our president.

Q. And Mr. Abersfeller works at your bank as correspondent officer from the N.B. of C., is that correct?

A. Yes.

Q. Did N.B. of C. assistance cease and desist immediately upon chartering of the bank?

MR. TORRE: Strike that.

BY MR. TORRE:

Q. (Continuing) Immediately upon the opening of the bank?

A. Well, the N.B. of C. has assisted, and I am sure they will, in anything that we ask them within reason but let me make it perfectly clear, to use the words of our President, C.C.N.B. dictates its own policy and makes its own management decisions and on occasion have disagreed and not taken the tack National Bank of Commerce would take, and always has.

Q. Do you sell participations to any other bank other than National Bank of Commerce?

A. I don't think we ever have. We went on a program of—

Q. (Interposing) To answer my earlier question, Mr. Loney, did, or did not, the assistance of N.B. of C. cease when the bank opened its doors?

A. Really, what was the word you used?

Q. Has N.B. of C. given assistance to the bank since it opened its doors?

A. Well, don't we have some kind of agreement with them where we buy computer time. I am not that knowledgeable enough but I think we buy services from the N.B. of C. today and have done so all the time.

Q. With regard to credit decisions, do they give you some assistance along those lines?

A. No, they never have unless it is a participating loan.

MR. TORRE: That is all.

MR. MOEN: That is all.

MR. HARTMAN: That is all I have.

(Deposition concluded at 1:40 o'clock p.m., August 18, 1972.)

/s/ Dean W. Loney

LONEY DEPOSITION EXHIBIT 1 IS REPRODUCED AS GX K-36 ON PAGE 1514.

LONEY DEPOSITION EXHIBIT 2 IS REPRODUCED AS GX K-70 ON PAGE 1573.

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
JAN 8 - 1973
EDGAR SCOFIELD, Clerk
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE; and WASHINGTON TRUST BANK, Defendants, and WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, Intervenor.	Civil Action No. 237-71C2

PRETRIAL ORDER

As a result of a Pretrial Conference, held heretofore where Plaintiff was represented by Richard J. Torre, Defendants by R. A. Moen and James Wm. Johnston, and the Intervenor by Jon D. Hartman, its attorneys of record, the following issues of fact and law were framed:

JURISDICTION

This action was filed on October 22, 1971 by Plaintiff, the United States of America, to challenge the legality of the proposed merger of Defendants, The National Bank of Commerce of Seattle, Seattle, Washington, and Washington Trust Bank, Spokane, Washington. The action was brought under Section 7 of the Clayton Act (15 U.S.C. §18) in accordance with procedures provided in the

Bank Merger Act of 1960, as amended in 1966 (12 U.S.C. §1828(c)).

Defendants Marine Bancorporation and NBC have their principal places of business, and transact business and are found within the Western District of Washington.

This Court has Jurisdiction to hear and decide the case.

ADMITTED FACTS

The following facts are admitted by the parties:

I

On March 9, 1971, The National Bank of Commerce of Seattle (NBC), a national banking association, and Washington Trust Bank (WTB), a Washington banking corporation, applied to the Comptroller of the Currency of the United States for permission to merge under the charter and with the title of NBC. A hearing on this application called by the Comptroller was held in Portland, Oregon on July 27, 1971. By his Decision dated and promulgated September 24, 1971, the Comptroller granted his permission to said merger. A full, true and correct copy of said Decision is attached hereto marked Exhibit A. A full, true and correct copy of the competitive reports on the proposed merger submitted to the Comptroller of the Currency by the Department of Justice (Exhibit B), the Board of Governors of the Federal Reserve System (Exhibit C), and the Federal Deposit Insurance Corporation (Exhibit D) is attached hereto.

II

Consummation of said merger was automatically enjoined under the provisions of the Bank Merger Act of 1966 (12 U.S.C. §1828(c)(7)) by the institution of this action on October 22, 1971.

III

Marine Bancorporation (hereinafter "Marine") is a registered bank holding company chartered by the State of Washington in 1927. It holds all the shares of The National Bank of Commerce of

Seattle, exclusive of directors' qualifying shares. Other Marine subsidiaries include Coast Mortgage Company and Commerce Credit Company, whose corporate name was formerly King County Building Company. International Bank of Commerce and National Bank of Commerce of Seattle (International) are subsidiaries of The National Bank of Commerce of Seattle.

IV

The National Bank of Commerce of Seattle (hereinafter "NBC"), founded in 1889, is a national banking association headquartered in Seattle. NBC is financially sound and has adequate and capable management. It operates 107 branch offices, of which at least one office is located somewhere in each of 29 counties of the 39 counties in the state. Of the four largest metropolitan areas in the State of Washington, i.e., the Seattle metropolitan area (the largest), the Tacoma metropolitan area (the second largest), the Spokane metropolitan area (the third largest), and the Everett metropolitan area (the fourth largest), NBC operates offices only in the Seattle metropolitan area, and does not operate any offices in the other three metropolitan areas, unless its office in Mukilteo is regarded as being in the Everett metropolitan area. NBC is the largest bank in Washington which does not operate in these areas, or any of them, except to the extent above mentioned. NBC does not have a branch in any of 100 cities in the State of Washington out of a total of the 154 Washington cities having a population of 1,000 or more. NBC operates two small branch offices in two communities in rural areas of Spokane County with total deposits of $11.7 millio, but these offices, while deriving some business from the Spokane metropolitan area, are not part of that commercial banking market. NBC has knowledge of the Spokane banking business through its past and existing business relationships in that area. As of January 31, 1972, NBC derived $4.4 million in deposits and has outstanding

$10.2 million in loans to customers (of which $8.5 million consist of loans to three borrowers, and the remaining $1.7 million is attributable to 426 loan accounts) in the Spokane metropolitan area, but there is no substantial existing competition between NBC and WTB in the Spokane metropolitan area or in any section of the country. Representation in Spokane has been a long-sought goal of NBC. Representation in Tacoma and Everett have also been long-sought goals of NBC.

Of the nineteen counties in eastern Washington, NBC operates at least one office somewhere in all but two (Ferry and Franklin). NBC participates in loans made by its correspondent banks to customers throughout eastern Washington.

V

The Washington Trust Bank (hereinafter "WTB") was organized under the laws of Washington in 1902. The Stanton family holds approximately 60% of the WTB stock. In addition to its main office, WTB operates seven branch offices, all of which are located in the Spokane metropolitan area. WTB is financially sound and has adequate and capable management consistent with the present size and scope of its operations; (this statement is not intended to weigh or decide problems of management costs relating to economies of scale).

NBC first approached WTB regarding possible merger in the mid-1950's. Negotiations leading to the proposed merger being challenged by this action began at the latest by mid-1969. Prior to its agreement to merge with NBC, WTB had actively considered a proposal to establish two additional branch offices on sites it had selected in the Spokane metropolitan area. WTB abandoned its plan to establish the two new branches after the announcement of its intention to merge with NBC because it was advised that permission for such branch offices could not be granted to a state chartered bank about to merge with a national

bank where the resulting bank will operate under a national charter.

VI

The State of Washington is divided into two geographic regions, coastal and interior, by the Cascade Mountains. There are thirty-nine counties in the state. The interior region or eastern Washington is comprised of the counties of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima.

VII

Washington Bancshares is a registered bank holding company chartered by the State of Washington which controls two commercial banking subsidiaries. Washington Bancshares holds 98 percent of the stock of the Old National Bank of Washington, and 99 percent of the stock of the First National Bank of Spokane.

VIII

Attached hereto is a copy of Plaintiff's Request for Admissions (as Exhibit E), Defendants' Response to Plaintiff's Request for Admissions (as Exhibit F), Intervenor's Response to Plaintiff's Request for Admissions (as Exhibit G), and Plaintiff's Reply to Defendants' and Intervenor's Responses to Request for Admissions (as Exhibit H).

AGREED ISSUES

The parties agree that there is no dispute as to the following issues of fact and law:

I

With respect to the issue of whether or not said merger offends Section 7 of the Clayton Act, the burden of proof is on Plaintiff to prove by a preponderance of the evidence that the effect of said merger may be substantially to lessen competition in any line of commerce in any section of the country.

II

Within the meaning of Section 7 of the Clayton Act, a "section of the country" is a relevant geographic market within which the competitive effects of a challenged merger may be judged.

III

The Spokane metropolitan area, as delineated in Exhibit I hereto ("the Spokane metropolitan area"), is a relevant geographic market within which the competitive effects of said merger may be judged.

IV

Existing competition between the parties to said merger is not such as to be significant, within the meaning of Section 7 of the Clayton Act.

V

Existing and potential competition in correspondent banking between the parties to said merger is not such as to be significant within the meaning of Section 7 of the Clayton Act.

VI

With respect to the issue of whether anticompetitive effects of said merger, if any, are justified by the convenience and needs of the community to be served, the burden of proof is on the Defendants to prove that the probable effect of said merger in meeting the convenience and needs of the community to be served clearly outweighs, in the public interest, such anticompetitive effects.

ISSUES OF LAW AND FACT

PLAINTIFF'S CONTENTIONS

Plaintiff contends that the following ultimate issues of law and fact are to be decided in the trial of this case:

I

The cluster of products and services denoted by the term "commercial banking" is the relevant line of commerce within which to judge the competitive effects of the merger challenged by this action may be judged.

II

The Spokane metropolitan area (See "Agreed Issues", supra), Spokane County, the State of Washington, and Eastern

Washington (the State of Washington east of the Cascade Mountains) are each a section of the country (within the meaning of Section 7 of the Clayton Act) within which the competitive effects of the merger challenged by this action may be judged.

III

The Spokane metropolitan area is a banking market.

IV

Defendant WTB is one of the leading commercial banking organization in the Spokane metropolitan area and Spokane County.

V

The economy of the Spokane metropolitan area is growing and is likely to continue to grow in the future. Concomitant with this continued growth will be increased demand for banking services.

VI

The Spokane metropolitan area is an attractive banking market. Its attractiveness provides incentive for entry by NBC. Spokane is (1) the second largest city in the State, (2) the largest city in Eastern Washington, (3) the largest market in which NBC does not operate an office, (4) the economic center of a vast multi-state trade area, commonly known as the "Inland Empire", and (5) growing economically. NBC is known to the bankers and banking customers of Spokane. NBC has knowledge of the Spokane banking business

through its past and existing business relationships in that area.

VII

The business of commercial banking in each of the sections of the country named in paragraph II immediately above is highly concentrated. (In a given geographic market or "section of the country," a line of commerce is highly concentrated when few sellers account for most or all of the business in that line of commerce. A highly concentrated market is characteristically less competitive than a less concentrated market).

VIII

Defendant NBC possesses the capability to enter the Spokane metropolitan area by means other than merging with WTB, and the capability if it should so enter to effect substantial deconcentration of the commercial banking business in the Spokane metropolitan area. These capabilities are demonstrated by its size, financial and managerial resources, and demonstrated ability to expand geographically. As the largest banking organization in the State of Washington without an office in the Spokane metropolitan area, NBC has greater capability to enter and to deconcentrate the Spokane market than any other banking organization which could legally enter the banking business in the Spokane metropolitan area.

IX

NBC is the most significant potential entrant into the commercial banking business in the metropolitan Spokane market due to its greater capability to enter and

deconcentrate that market. Since NBC has these capabilities and incentive to enter, the threat of its entry exerts a pro-competitive effect upon competition in the Spokane market.

X

NBC could enter the Spokane metropolitan area other than by merging with WTB by any of the follwoing means:

1. Sponsoring a new bank and subsequently merging with it;

2. Merging with an existing smaller bank in the Spokane metropolitan area. Such a "foothold" acquisition is tantamount in competitive effect to de novo entry. The American Commercial Bank and the Farmers and Merchants Bank are "footholds" which NBC has the capability to acquire.

3. Purchasing an existing branch office or branch offices in the Spokane metropolitan area. RCW § 30.40.02.

4. Agreeing to merge with an existing small bank located in Spokane County outside the Spokane metropolitan area on the condition that it convert itself to a nationally chartered bank and relocate its main office into the Spokane metropolitan area. Such a bank could also acquire authority to open one or more branch office simultaneous with its relocation. It could also retain its existing location as a branch. The Bank of Fairfield or the Bank of Latah are Spokane County banks which could convert and relocate, and which NBC has the capability to acquire.

5. Branching into metropolitan Spokane de novo. Plaintiff contends that NBC, as a federally chartered bank, may branch to the same extent as a state-chartered mutual savings bank in the State of Washington. 12 U.S.C. § 36; RCW § 32.04.030.

XI

WTB has the capability and incentive to enter other local markets in the State of Washington and eastern Washington, either by combining with other middle-sized or smaller banks or independently.

XII

The proposed merger of NBC and WTB may substantially lessen competition in commercial banking in violation of Section 7 of the Clayton Act in the following ways:

(1) NBC will be eliminated as a significant potential entrant deconcentrator of the metropolitan Spokane market;

(2) The Pro-competitive effect that NBC presently exerts on competition in metropolitan Spokane market, resulting from the threat of NBC's entry into that market, will be eliminated;

(3) Old National Bank of Washington will be entrenched as the dominant bank in metropolitan Spokane and Spokane County by eliminating WTB as its most significant competitor for branch sites;

(4) Potential competition in the State of Washington and eastern Washington will be substantially lessened by the elimination of WTB;

(5) The existing statewide and regional bank oligopoly will be strengtened by the elimination of WTB as a potential new competitor in local markets in Washington, either in combination with other middle-sized or smaller banks, or independently,

(6) Mergers and consolidations between other leading banks in Washington may be fostered, resulting in the further concentration of banking resources in the state in the hands of a few large banks, thereby reducing diversity in banking choices and promoting parallel policies among leading banks in local markets.

* * *

DEFENDANTS' CONTENTIONS

Defendants contend that the following ultimate issues of law and fact are to be decided in the trial of this case:

I

Where existing competition between the parties to a merger is not significant, the issue under Section 7 of the Clayton Act becomes whether one of the parties to the merger is a potential entrant into a relevant geographic market so that

significant potential competition may be eliminated by the merger.

II

Within the meaning of Section 7 of the Clayton Act, the relevant geographic market (section of the country) is where, within the area of competitive overlap, the effect of the merger on competition in the line of commerce involved will be direct and immediate.

III

Whether or not a commercial bank is a potential entrant, and thus a potential competitor in the market, must be based on reasonable probabilities arising from the actual realities of the business of banking, as contrasted with possibilities arising from theoretical postulates. Section 7 of the Clayton Act is concerned with probabilities, and not with ephemeral possibilities.

IV

In order for NBC to be a potential competitor in the Spokane metropolitan area, it must be shown to be reasonably probable that NBC may enter the Spokane metropolitan area market in the foreseeable future by means other than said merger.

V

In order for NBC to be a potential entrant in the Spokane metropolitan area market, there must be no unreasonable barriers to its entry into that market so that it possesses the capability to enter that market.

VI

A legal barrier exists which forestalls entry by NBC into the Spokane metropolitan area market in the foreseeable future by means other than said merger.

VII

NBC, as a national bank having its principal place of

business in Seattle, King County, Washington, is authorized by the national banking laws to enter the Spokane metropolitan area only by establishing a branch or branches in that area. 12 U.S.C. §36. In this connection, said Section 36, in subparagraph (c)(2) thereof, provides that where the branch is to be established outside the city, town or village in which the bank is situated, such branch may be established --

> "at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks."

The Supreme Court of the United States has construed this statutory provision to mean that national branch banking is limited to those states the laws of which permit it, and even there "only to the extent that the state laws permit such branch banking." First National Bank of Logan Utah v. Walker Bank & Trust Co. 385 U.S. 252, 87 S.Ct. 492, 17 L.Ed.2d 343 (1966). See also First National Bank of Catawba County v. Wachovia Bank & Trust Co. N.A. 448 F.2d 637 (1971;CCA 4) affirming 325 F.Supp. 523.

VIII

The banking law of the State of Washington forbids a state bank to establish or operate a branch in any city or town outside the city or town in which its principal place of business is located (if there is a bank in such city or town) --

> "except by taking over or acquiring an existing bank, trust company or national banking association or the branch of any bank, trust company or national banking association operating in such city or town." RCW Sec. 30.40.020.

By reason of this statutory restriction, and the fact that there is no other "existing" bank or branch thereof available for

acquisition in the area, NBC has no means of entering the Spokane metropolitan area, other than by the merger with WTB.

IX

The various means of entry into the Spokane metropolitan area asserted by Plaintiff in its Complaint and in Plaintiff's Answers to Defendants' Interrogatories as being available to NBC, are not in fact available, for the following reasons:

(a) Plaintiff's asserted means #1: "Sponsoring a de novo bank in Spokane and merging with it."

(i) This proposal necessarily contemplates the organization of a state or national bank as a mere vehicle or stand-in to fulfill the statutory requirement that there be an "existing" bank to be "acquired". Such a method would constitute an evasion of the statutory restriction. Should such purpose be openly disclosed in an application for the new bank's charter, the charter would not be granted. Should such purpose be concealed, the application would constitute a fraud on the banking agency involved, and a fraudulent attempt to evade the statutory restriction. Both the Supervisor of Banking of the State of Washington and the Comptroller of the Currency of the United States confirm that disclosure by the applicant of such purpose would require denial of the charter.

(ii) Plaintiff has cited a number of instances over the past 10 or 15 years where certain national banks in Washington have acquired small local banks by merger from five to ten years after the acquiring bank had assisted with the organization of the acquired bank in various ways and in varying degrees. To the extent that any of these acquisitions actually were, as Plaintiff implies, merely the final step in a series of transactions for the sole

purpose of establishing a forbidden de novo branch through the device or organizing a stand-in unit bank so that it could be "acquired", it was an evasion of the state's branching laws and demonstrates only culpability on the part of the banks involved. Defendants believe that in most, if not all, of the instances cited, the implication Plaintiff attempts to draw is not justified. To the extent that regulatory agencies knowingly joined or participated in any such scheme or procedure, as Plaintiff also implies, their action was illegal and unauthorized. Defendants believe that the regulatory agencies did not knowingly participate in or permit the execution of any such scheme.

In any event, the national banking law (12 U.S.C. 36(c)) permits branching only where it is "authorized to state banks by the statute law of the state in question by language specifically granting such authority affirmatively, and not by implication or recognition."

(b) Plaintiff's asserted means #2: "Merging with an existing smaller bank in the Spokane metropolitan area."

There is no existing smaller bank in the Spokane metropolitan area which is for sale or with respect to which there is any reasonable probability that it could be acquired by NBC in the foreseeable future. In addition, the only smaller bank with offices in the City of Spokane mentioned by Plaintiff is American Commercial Bank, a state bank, which is prohibited by its charter from merging or disposing of its assets until April 9, 1975 without the approval of the Supervisor of Banking. The Supervisor has publicly asserted that he will not waive such charter restrictions in the absence of current compelling circumstances. The Supreme Court of the State of Washington has held that

a state bank cannot convert into a national bank during the period of such charter restrictions without the consent of the Supervisor. McMurray v. Security Bank of Lynnwood, 64 Wn.2d 708.

Farmers and Merchants Bank has its main office in an unincorporated portion of the Spokane metropolitan area. It has no office in the City of Spokane. Even if it could be acquired by NBC (there being no reasonable probability that it could be so acquired), Washington law would not permit this office to be moved into the city. NBC could not effectively compete in the Spokane metropolitan area from a single banking office in the unincorporated portion thereof where Farmers and Merchants Bank's office is located.

(c) Plaintiff's asserted means #3: "Purchasing an existing branch or branches in the Spokane metropolitan area."

There are no branches for sale. To the best of Defendants' knowledge, no branch of a bank has ever been sold in Washington, and there is no reasonable probability that there ever will be.

(d) Plaintiff's asserted means #4: "Agreeing to merge with an existing small Spokane County bank on condition that it convert itself to a nationally chartered bank and relocate its main office into the Spokane metropolitan area. Such a bank could also acquire authority to open a branch or branches within the Spokane metropolitan area simultaneous with its relocation."

It is true that upon a proper showing, and, subject to the approval of the controlling governmental agency, a bank may relocate its main office (as to national banks, not more than 30 miles), but only where

the purpose is to actually relocate the main office. Such a move does not constitute branching. However, if this procedure is merely a device for the establishment of a branch by another bank, as it would be under Plaintiff's proposal, it then does constitute branching and is subject to the branching restrictions imposed by state law. Here again such a procedure would constitute a transparent evasion of the statutory restrictions imposed by Washington banking law above referred to.

(e) Branching de novo as a mutual savings bank. Washington law relating solely to savings banks, and specifying the circumstances under which savings banks organized under state law may branch (RCW Sec. 32.04.030) has no application to branching by commercial banks which is governed by RCW Sec. 30.40.020. The classification of banks as savings banks and commercial banks for the purpose of fixing the extent of the authority of each such class to establish and operate branches is recognized by the national banking law (12 U.S.C. 36(c)), and national banks, which are commercial banks, are subject to the limitations and restrictions with respect to branching that are imposed by state law on state banks which are commercial banks, notwithstanding the fact that state law may impose other and lesser restrictions on branching by state banks which are savings banks. State Chartered Banks in Washington v. Peoples Nat. Bank of Washington (1966) 291 F.Supp. 180.

X

The only threat of entry by NBC into the Spokane metropolitan area is the consummation of said merger. If consummation of the merger is frustrated by this action, NBC will not be in a position to pose any threat to competition in the area since the legal barriers to its entry will eliminate it as a

potential entrant as far as the banks in the area are concerned.

XI

Since NBC is barred of entry into the Spokane metropolitan area market by means other than said merger, the substitution of NBC for WTB will not increase the degree of concentration in commercial banking in that market. On the contrary, due to NBC's superior competitive capability and its established character as a vigorous competitor in all areas where it does business, there is a reasonable probability that the substitution of NBC for WTB in the Spokane metropolitan area market will result in a substantial de-concentration of that market by reducing the share of the business presently enjoyed by the two market leaders, Seattle-First National Bank and Old National Bank of Washington.

XII

As stated in U. S. v. The Philadelphia National Bank, 374 U. S., 321, 10 L.Ed.2d 915, with respect to banking in the Philadelphia area, convenience of location is essential to effective competition in banking in the State of Washington. Individuals and corporations typically confer the bulk of their patronage on banks in their local community; they find it impractical to conduct their banking business at a distance. The factor of inconvenience localizes banking competition as effectively as high transportation costs in other industries. The predominantly local character of banking in the State of Washington holds true in the smaller local communities as well as in the metropolitan areas, such as the Spokane, Seattle, Tacoma and Everett metropolitan areas. While there are several national banks in Washington, with numerous branches throughout the state, each of them has no presence in a number of important local banking markets. For example, although NBC has 107 branches, it has no office in three of the four major

metropolitan areas of the state above mentioned. Of these four areas, NBC has offices only in the Seattle metropolitan area. An important factor in this connection is the restrictive branch banking laws which have, until the present merger opportunity with WTB, prevented NBC from entering the Spokane market.

XIII

Due to the basically local character of banking in the state, and the fragmented character of the presence of even the largest banks in the various regions of the state, neither the state as a whole, nor any of the larger regions of the state, can qualify as a relevant geographic market or section of the country with respect to commercial banking within the meaning of Section 7 of the Clayton Act. Neither the state as a whole nor any of these regions are, as such, areas of competitive overlap in commercial banking. Neither the state nor any of its major regions constitute an area where "the effect of the merger will be direct and immediate".

XIV

As "Spokane County", "eastern Washington", and "Washington" do not qualify as sections of the country with respect to commercial banking within the meaning of Section 7 of the Clayton Act, charges made by Plaintiff based on those geographical areas do not constitute a legally supportable charge under Section 7.

XV

Any state or national bank having its main office in the City of Spokane may, with agency approval, establish new branches in the city and in unincorporated areas of Spokane County, and there is no reasonable probability Old National Bank of Washington "will be entrenched" as the dominant bank in metropolitan Spokane and Spokane County by the elimination of

WTB as a competitor for branch office sites.

XVI

There is no reasonable probability that WTB will acquire or establish banking offices outside Spokane County so as to become a competitor in local markets in the State of Washington other than the Spokane metropolitan area, or that it will, or is capable of becoming, a regional or statewide bank.

XVII

WTB was organized in 1902. It operates seven branch offices, all of which are in the Spokane metropolitan area, and all but one of which are in the City of Spokane. At no time since its organization has it given serious consideration to expansion outside the Spokane metropolitan area. Due to the branching restrictions of state law, any such expansion outside Spokane County could be accomplished only by acquiring "existing" banks. De novo entry is barred. WTB has neither the resources nor the inclination to embark on any scheme to become a regional or statewide bank. Even if suitable candidates for acquisition exist (which Defendants do not believe to be the case), such independent banks ordinarily are willing to sell (or merge) only on the basis of a substantial premium to their stockholders. WTB does not have the resources to pay such premiums in cash, and its stock is not marketable and thus not attractive to individuals such as the stockholders of small-to-medium size local banks. Furthermore, WTB's principal stockholders are entirely unwilling to dilute their equity to accomplish any such acquisitions, and have no intention of doing so. WTB's branches in Spokane are a closely knit group of offices, tied closely to the main office both administratively and operationally. They are more in the character of arms or extensions of the main office than semi-independent branches such as are essential to the composition of a true regional branch system. Consequently, WTB has no real

experience or know-how in the operation of a branch system such as would be involved in even a small regional system. It is not practical nor economically feasible for WTB to develop the necessary management base for a regional branch system, and it has no intention of doing so.

XVIII

In view of the fact that under the restrictions of Washington State branching law, WTB cannot establish de novo branches outside Spokane County, any such expansion would necessarily have to be by way of the acquisition of existing banks. This would not increase the number of banking offices in any community. It would merely substitute a WTB branch for an existing independent unit bank. No additional banking alternative would be provided the community.

Competition would be effected only by an increase or decrease of effort as a result of the conversion of the existing unit bank into a branch of WTB. In view of WTB's inexperience in operating a true branch system and the normal incentive of local ownership, the reasonable probability is that the competitive effect of the banking office would decrease rather than increase as a result of any such takeover.

XIX

Mergers and consolidations between other banks in Washington, either state or national, cannot be consummated without the approval of regulatory authorities which are charged with the duty of examining all aspects of the proposed merger or consolidation to determine whether or not it is in the public interest. Included in the matters which must be considered in this connection is the effect of the merger or consolidation on competition in commercial banking, and whether it would result in undue concentration of banking resources, unduly reduce diversity in banking choices or promote parallel policies among leading banks in

local markets. If, by reason of any of these factors, any such merger or consolidation is found not to be in the public interest, it is the duty of the regulatory authorities to withhold their approval. There is no reason to assume that the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, or the Supervisor of Banking of the State of Washington, as the case may be, will fail to perform its duty, or, as Plaintiff appears to imply, will fail to do so because of the consummation of the instant merger between NBC and WTB.

XX

The needs and convenience of the community that will be provided by NBC as a result of said merger arise principally from NBC's capability to make available the resources and services of a major full service bank which can and will provide commercial bank customers in the Spokane metropolitan area with a complete alternative in all areas of commercial banking to those offered by the two present market leaders, Seattle-First National Bank and Old National Bank of Washington. Many of the banking products and services which NBC will make available are not presently available in the community, or are available only to a limited extent, except through one or both of said two market leaders.

Among such products and services are the following:

(1) NBC's capability to mobilize funds to capital deficient areas when needed will provide a substantial benefit to Spokane, which is basically a capital deficient area.

(2) NBC's resources and geographical diversification permit it to engage in credit-gap financing and to undertake a volume of higher-than-normal risk loans. Higher risks are associated with loans to new industries and small business, and it is economically desirable to in-

crease the number of institutions willing to undertake the filling of credit gaps. Large banks provide more financing for small businessmen than do smaller banks.

(3) NBC will provide substantial increased competition in the municipal bond market. As a general rule, municipalities have to pay higher interest costs on small issues because the market for them is substantially limited to the community.

(4) NBC will provide full international banking services to the community. NBC has two Edge Act international banking corporations, with 5 offices in Hong Kong, 1 in London, and 1 in New York. They also have business offices in Singapore and Tokyo. Size is of great importance in international banking because of the risks involved, the need for specialized experts, and the desirability of maintaining foreign offices. It would not be prudent for smaller banks to enter the international banking business.

(5) NBC will offer full correspondent bank services to the smaller banks in the community, including correspondent services in international banking, data processing, investment and credit.

(6) NBC will offer expanded trust department service equal to or better than that offered by the market leaders. These will include complete investment service and tax counsel for trust department customers.

(7) NBC will offer expanded data processing service which will be competitive with such services offered by other larger banks in the area. This will include data processing services with respect to accounts receivable, payroll accounting and other areas not presently available to WTB customers.

(8) NBC will offer its Economic Opportunity Loan Program to members of minority groups in the community.

(9) Said merger will provide additional benefits and opportunity for advancement to the employees of WTB. These employee benefits include health and life insurance plans, educational assistance, retirement benefits, and paid vacations.

XXI

The needs of the Spokane metropolitan area community which will be provided for by NBC as a result of said merger are immediate needs. The products and services which NBC will be in a position to furnish are needed now, not five to twenty years from now depending upon purely speculative postulates.

XXII

The needs and conveniences that will be provided by NBC as a result of said merger cannot reasonably be expected through other means.

* * *

INTERVENOR'S CONTENTIONS

Intervenor contends that the following ultimate issues of law and fact are to be decided in the trial of this case (Roman Numerals correspond to paragraphs of Plaintiff's Contentions. Intervenor has also set out its contentions as to the convenience and needs defense.):

I

Intervenor does not dispute plaintiff's allegation that commercial banking is the line of commerce within which to judge the competitive effects of this merger with particular reference to §7 of the Clayton Act. Intervenor contends, however, that other financial institutions are to be considered in weighing the procompetitive and convenience and needs aspects of this case, and that the existence and strength of such other institutions are relevant considerations in determining, among other things, whether entry into a given section of the country is attractive and whether a new bank needs to be chartered.

II

Intervenor contends that the Spokane Metropolitan Area is a "section of the country" within the meaning of §7 of the Clayton Act, and further contends that it is the "section of the country" to be used by this Court in measuring the effects of this merger under §7 of the Clayton Act.

III

Intervenor contends that for the term "banking market" to have any meaning in this case, it must be synonymous with the term "section of the country". Plaintiff, of course, is

entitled to define the term any way it desires, unless it contends that that term has an established legal meaning other than "section of the country". Such a definition would be subject to dispute by intervenor.

IV

Intervenor contends that plaintiff's statement in its §IV is meaningless and therefor has no bearing on this case.

V

Intervenor contends that for all practical purposes the economy of Spokane is stagnant; that future change will be limited to moderate increases in population and in economic activity. There is no apparent need for a new bank in the reasonably foreseeable future.

VI

Intervenor points out that plaintiff, in stating this contention, shifts from a conclusion about the Spokane Metropolitan Area's attractiveness to alleged facts about the City of Spokane. Intervenor contends that the other Metropolitan Areas are more attractive as a place for NBC entry and that the Spokane Metropolitan Area is not attractive except for entry through this merger.

VII

Intervenor contends that commercial banking in the Spokane Metropolitan Area is not concentrated in any sense meaningful in the resolution of issues in this case. The number of competing firms (banks) in the relevant section of the country is a function of the regulatory agencies. The "share of market" held by each focuses only on one aspect of

their operations, e.g., deposits, in which there is strong competition from non-bank firms excluded from the market by definition. The public interest protected by bank regulation requires that "concentration" be given little value in determining the adequacy of bank performance in a given market.

VIII

Intervenor contends that NBC possesses no more capability to enter the Spokane Metropolitan Area than any of several other banks in the State of Washington. It may lawfully enter only by merger. Merger with any bank other than Washington Trust is not reasonably probable; nor is the employment or legality of any scheme to circumvent and evade the law.

IX

Intervenor contends that NBC's "capabilities and incentive" to enter the market are theoretical concepts, products of the imaginative minds of plaintiff's counsel, and as such constitute no "threat" of entry procompetitive or otherwise, to practical businessmen bankers in the relevant section of the country.

X

Intervenor contends that National Bank of Commerce cannot enter the Spokane Metropolitan Area by any means other than this acquisition. NBC is regulated by the Comptroller of the Currency, intervenor herein, and regulatory approval would be necessary before any entry - theoretical or otherwise, could be made. Plaintiff contends entry can be made through a scheme to circumvent state law by "sponsoring" a

new bank and merging it. As to this plan, intervenor contends it would not charter a new bank in the Spokane Metropolitan Area in the reasonably foreseeable future. Intervenor, furthermore, would not participate in a plan or scheme to unlawfully circumvent and evade the prohibitive branching laws of the State of Washington. See First National Bank of Logan Utah v. Walker Bank & Trust Co. 385 U.S. 252, 87 S.Ct. 492, 17 L.Ed.2d 343 (1966). Although intervenor has authority to charter new national banks and also authority to merge national banks, these are two separate and distinct events, each depending upon the particular banking and competitive factors operating at the time. On occasion, intervenor has felt it helpful that a responsible existing bank assist the newly chartered bank through the difficult early stages. The fact that intervenor might become aware of the desire and hope of the helping bank to later merge with the new bank is irrelevant to intervenor's action on the charter application and likewise on any merger application involving the new bank. Any commitment by the agency (which would be necessary to assure success of a plan to evade state law) tying a future merger to the present grant of a charter would be unlawful circumvention, subject to a suit for injunction. Under these circumstances, no charter would be issued.

There is no reasonable probability of foothold entry by merger with another bank. The practical availability of such an alternative is non-existent. Similarly, the acquisition of a branch of a Spokane bank would not constitute meaningful entry and no such branch is available.

The convoluted scheme or plan required to carry out the other suggested method involving a merger appears tantamount to an illegal agreement to evade and circumvent state law, and therefore not permitted. Lastly, de novo branching into closed towns is unlawful whether by a national bank or any other bank.

XI

Intervenor contends that Washington Trust does not have the capability and/or incentive to enter other areas in the State. Intervenor further contends that assuming arguendo this to be true there is no violation of any anti-trust law by the instant merger as there is no substantial lessening of competition or tendency toward monopoly in any section of the country.

XII

Intervenor denies that the merger will have any of the effects alleged.

Convenience and Needs

The Affirmative Defense Under 12 U.S.C. §1828 (c)

Intervenor invokes and alleges the Bank Merger Act of 1966 as an affirmative defense to the Complaint.

Intervenor contends that there are no anticompetitive effects of this bank merger as alleged by plaintiff. Further, those anticompetitive effects alleged by plaintiff, even if proved, are clearly outweighed in the public interest by the benefits of this merger to the convenience and needs of the Spokane Metropolitan Area.

Intervenor contends this merger will be procompetitive. Procompetitive effects are to be considered as part of the convenience and needs affirmative defense provided under the Bank Merger Act of 1966. United States v. Phillipsburg National Bank & Trust Co., 399 U.S. 350 (1970). As the procompetitive effects of this merger benefit at least the entire Spokane Metropolitan Area, these effects alone can clearly

outweigh the alleged anticompetitive effects. In other words, the net competitive effect will be procompetitive.

This merger will provide banking services either not now adequately available from banks in Spokane or if available only from Seattle First or Old National to any degree. Such new banking services, which Washington Trust either does not now offer in competition with other banks or offers only on a limited basis, include lease financing, student loans, SBA loans, general farm loans, FHA and VA mortgage financing, economic opportunity loans for minority groups and turn key low cost housing for the elderly.

The addition of such competitive services together with stronger and more complete trust and computer services resulting from the merger will make Washington Trust a better bank.

The merger will benefit all members of the community to be served inasmuch as Washington Trust, as a better bank, can contribute, from its new strength, to the future of Spokane. Each additional competitive banking service will do likewise, as competition benefits everyone. Larger lending limit will help users of bank credit expand and increase employment, to the benefit of the entire community.

For example, there is a need in Spokane for another, competitive, source of international banking services. With entry through this acquisition NBC can provide extensive assistance to the many traders and manufacturers in Spokane who are now engaged in international trade and have an extremely limited competitive choice of banks providing such

services.

Intervenor contends that the community to be served by the convenience and needs benefits of this merger will be at least as large as the Spokane Metropolitan Area although such benefits can be deemed to serve a larger area. Thus benefits can flow outside of Spokane to the mining, farming and logging industries which look to Spokane for their banking needs and where the competition for their business may take place.

Intervenor further contends that there is no reasonable alternative way these benefits of better banking can be brought into the community within the reasonably foreseeable future other than through this acquisition.

Intervenor contends that even assuming arguendo the anticompetitive effects alleged by plaintiff, they are clearly outweighed in the public interest by the probable effect of this merger in meeting the convenience and needs of the community to be served.

* * *

The foregoing pretrial order has been approved by the parties hereto, as evidenced by the signature of their counsel hereon, and this order is hereby entered, as a result of which the pleadings pass out of the case, and this pretrial order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

Dated this 5 day of January, 1973.

William M. McCue
United States District Judge

FORM APPROVED:

Attorney for Plaintiff

Attorney for Defendants

Attorney for Intervenor

THE ADMINISTRATOR OF NATIONAL BANKS

WASHINGTON, D.C. 20220

Office of the
Comptroller of the Currency

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE WASHINGTON TRUST BANK, SPOKANE, WASHINGTON, INTO THE NATIONAL BANK OF COMMERCE OF SEATTLE, SEATTLE, WASHINGTON, UNDER THE CHARTER AND WITH THE TITLE OF THE LATTER

STATEMENT

On March 9, 1971, Washington Trust Bank, Spokane, Washington, and The National Bank of Commerce of Seattle, Seattle, Washington, applied to the Comptroller of the Currency for permission to merge under the charter and with the title of the latter. A public hearing on this application called by this Office was held in Portland, Oregon, on July 27, 1971.

The National Bank of Commerce of Seattle, the charter bank, with total deposits of approximately $1.3 billion, was organized in 1889. It operates through a state-wide network of 104 branches and is a wholly-owned subsidiary of Marine Bancorporation, a one-bank holding company. The charter bank is the only one of the five largest banks in Washington which is not represented in either Spokane, Tacoma or Everett -- three of the four largest population centers in the state; it cannot enter these areas with de novo branches because of the restrictive state laws.

Seattle, the site of the charter bank's head office, has a population of 531,000 with 1.3 million persons living in the metropolitan area. It is the state's largest city. Not only is Seattle the financial, educational and cultural center of the Pacific Northwest, but is the principal industrial, manufacturing and wholesale and retail distributing center as well. Its economy has been dominated since World War II by the aerospace industry, principally by the Boeing Company. It has a fine harbor and international airport. As a trade center, it is important as a gateway to Alaska and to the Orient. The economy of the State west of the Cascade Mountain range, where 76 of the charter bank's branches are located, is based upon lumbering activity, forest products, the aerospace industry, manufacturing, and retail and international commerce.

EXHIBIT A

The charter bank is the second largest bank in the state. It competes with the Seattle-First National Bank, the largest bank in the state, which has deposits of almost $2 billion; with the Pacific National Bank of Washington, the third largest bank in the state, which has total deposits of $659 million; and with the Washington Mutual Savings Bank, the largest mutual savings bank in the state - - all of which are headquartered in Seattle. In Seattle there are 10 commercial banks with 106 banking locations and $2 billion in total area deposits. Seattle-First National Bank leads in Seattle area deposits with $783 million; the charter bank is second with $486 million; Peoples National Bank of Washington is third with $258 million in deposits; Pacific National Bank of Washington, with $226 million in Seattle area deposits, is fourth; while the Bank of California branch ranks fifth with $116 million in area deposits. Savings and loan associations and mutual savings banks are important competitors for deposits both state-wide and in Seattle while other financial institutions also offer competition.

Washington Trust Bank, the merging institution, with total deposits of $37 million, was organized in 1902. All of its 8 branch offices are located in the Spokane area. While substantial growth has occurred in the merging bank in the last 10 years, its customers do not enjoy the more comprehensive services larger institutions provide.

Spokane, Washington, home of the merging bank, with a population of 170,516 and a trade area population of over 1 million, is the second largest city in the state. Located 288 miles east of Seattle between the Cascade Mountain range and the Continental Divide, it is in a generally arid part of the state. A stable economy has been produced by diversification among agriculture, lumbering, light manufacturing, mining, military installations, retail and wholesale trade; agriculture and lumbering have the major roles. The merging bank, the seventh largest of Washington's 85 commercial banks, controls 1.6 percent of state-wide deposits. In Spokane there are seven commercial banks with 38 banking locations and $459 million in total deposits. Of these, Old National Bank of Washington is largest with 14 offices and $160 million in total area deposits. Seattle-First National Bank is second largest, controlling $134 million in deposits. The merging institution is third largest with $37 million in area deposits. First National Bank in Spokane is fourth largest, controlling $37 million in deposits and is followed by Pacific National Bank of Washington with $26 million in deposits and American Commercial Bank with $10 million in deposits. The $5 million Farmers and Merchants Bank of Rockford, located 18 miles south of Spokane, has an office in Opportunity, a suburb of Spokane, which competes with a branch of the merging bank in the same town.

EXHIBIT A

Any competition which now exists between the participating banks in this proposal is de minimis. The National Bank of Commerce has no branches in the City of Spokane and only two small branches in Spokane County which are located in the small communities of Deer Park and Medical Lake. Washington Trust Bank has no offices outside Spokane County. Each branch of The National Bank of Commerce is located at least 15 miles from the nearest office of Washington Trust Bank. A close examination of the business done by National Bank of Commerce in these two branches indicates that they cannot realistically be regarded as providing significant competition to Washington Trust Bank. The public hearing produced evidence showing that slightly over 1/2 of 1% of the demand deposits at Washington Trust Bank have addresses at Deer Park or Medical Lake. Even less, viz., .01 of 1% of passbook savings at Washington Trust come from Deer Park and only .02 of 1% come from Medical Lake. The same general pattern was shown by the evidence to be true respecting loans at Washington Trust Bank. Approximately 5% of the deposits and less than 3% of the loans at the Deer Park Branch of charter bank originated within the Spokane city limits. The evidence showed the figures on the Medical Lake Branch of charter bank were slightly higher.

The National Bank of Commerce is prohibited by the branch banking laws of Washington from de novo branching into Spokane or any other city or town in which any other bank has an office, except Seattle. Similarly, Washington laws effectively prevent The National Bank of Commerce from causing a new Spokane bank to be formed, which could later serve as a merger partner. Any such new bank would, under Washington law, be prohibited from entering any sale, merger or consolidation agreement for not less than ten and for as many as twenty years without prior approval of the State Supervisor of Banking. Accordingly, the only available method by which The National Bank of Commerce can lawfully enter Spokane is by merger with one of the existing banks; the advisory opinions on the competitive effects of this merger stress that such a merger should be with the smallest commercial bank in Spokane. The smallest bank in Spokane is the $10 million state-chartered American Commercial Bank. The evidence received at the public hearing on this application demonstrated that this small bank, chartered in 1965, cannot now legally merge with any other bank until it is at least 10 years old.

Another question is whether Washington Trust Bank may reasonably be expected to enter state-wide competition with The National Bank of Commerce. There is no evidence that Washington Trust Bank has ever seriously considered so drastic an expansion of its present size and position. It is pertinent that Washington Trust Bank does not now have any office outside Spokane County, and, indeed, until 1957 it did no branching even within the City of Spokane. Washington Trust Bank has no prior merger or acquisition history. It is

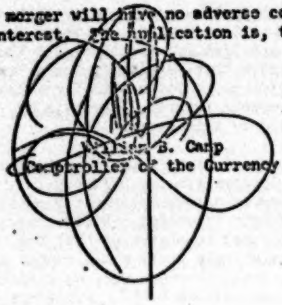
prevented by the branch banking laws of Washington from de novo branching in any city or town, other than Spokane, in which any other bank now has an office. The bank's size and history, together with the barriers created by the laws of Washington, indicate that Washington Trust Bank may not realistically be expected to enter state-wide competition with The National Bank of Commerce within the reasonably foreseeable future. Accordingly, potential competition will not be adversely affected by this merger.

Consummation of this proposed merger will serve the public interest of the Spokane area by bringing to the city and its environs an alternative source of sophisticated banking services and by promoting competition among the financial institutions serving the area. Evidence adduced at the hearing demonstrated that the Washington Trust Bank, because of its relatively small size, cannot adequately meet the banking needs of many Spokane borrowers who, as a result, have been forced to deal with larger commercial banks. This merger will not only bring another alternative source of larger credits to Spokane for the convenience of potential borrowers, but will also provide to all in the area who have a need another source of broad range banking services. These expanded services will include expertise in agricultural and mining loans. Student loans, economic opportunity loans, low income housing lending, SBA loans and turnkey low cost housing construction loans for the elderly will all become available after the merger. FHA and VA mortgage lending which Washington Trust does not now offer its customers will also be provided. The National Bank of Commerce will also bring to Spokane considerable expertise in international banking through its large international banking department with offices in Hong Kong, Singapore, London, Tokyo and New York City.

The enhanced competition that this merger will produce will contribute to the convenience and needs of bank customers in Spokane, the Spokane area, and therefore, the State of Washington. The National Bank of Commerce alone among the five largest banks of the state, is now restricted to only one of the four principal cities of the state. As indicated earlier, the only method available by which The National Bank of Commerce may lawfully enter the City of Spokane is by merger with Washington Trust Bank. In contrast, the first and third largest banks in the state, Seattle-First National Bank and the Pacific National Bank of Washington -- are represented in each of the state's four principal cities. The other banks in Spokane will be strengthened by the fact that, because of state laws, the merged bank will not be permitted to branch de novo in Spokane. This will enable the locally based banks to grow and acquire competitive muscle.

EXHIBIT A

It is concluded that the merger will have no adverse competitive effect and is in the public interest. The application is, therefore, approved.



William B. Camp
Comptroller of the Currency

Dated: September 24, 1971

EXHIBIT A

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number
RVMcL:DIB:CLW
60-111-2134

May 21, 1971

Honorable William B. Camp
Comptroller of the Currency
Treasury Department
Washington, D. C. 20220

Dear Mr. Camp:

This is in reply to your letter of March 11, 1971, requesting a report pursuant to Section 18(c) of the Federal Deposit Insurance Act, on the competitive factors involved in the proposed merger of the Washington Trust Bank, Spokane, Washington into the National Bank of Commerce of Seattle, Seattle, Washington.

1. The Banks

The National Bank of Commerce of Seattle ("NBC"), the second largest bank in the State of Washington, was founded in 1889. NBC operates 99 offices, 29 of which are in the City of Seattle. During the past five years, NBC has acquired two state banks. As of December 31, 1970, NBC had total deposits of $1.1 billion (including IPC demand deposits of $393.2 million), and net loans and discounts of $656 million. NBC had a net operating income in 1970 of $13.7 million, which was 34 per cent above its 1965-69 average of $10.7 million.

The Washington Trust Bank ("WTB"), the ninth largest bank operating offices in the State of Washington, was funded in 1902. It operates all of its offices in the Spokane metropolitan area. As of December 31, 1970, WTB had total deposits of $87.3 million (including IPC demand deposits of $37.7 million); and net loans and discounts of $53.2 million. In 1970, WTB's net operating income was $953,000 which was 8 per cent above its 1965-69 average of $884,000. WTB has no history of merger activity.

2. The Community

Spokane, the second largest city in the State of Washington, is known as the "capital" of the Inland Empire. The Inland Empire is a regional trade territory which encompasses parts of four states. It extends from the Canadian border to the Blue Mountains in northern Oregon, and from the eastern slopes of the Cascade Mountains in Washington to the western slopes of the Rockies in Montana. This area encompasses 36 counties and 1.2 million people.

Spokane is the economic center of this area, where agriculture is the major income producer. The area also contains important mining districts, extensive timber forests and lumber mills.

Although the population of the City of Spokane itself (170,156) decreased 6.1 per cent from 1960 to 1970, the population of Spokane County, as a whole, (287,487) increased 3.3 per cent. Nine banks operate a total of 47 banking offices in Spokane County, but two of these are affiliated with one another. Six banks operate a total of 34 banking offices in the City of Spokane, including the two affiliated banks.

3. Effect on Existing Competition

NBC operates two branch offices in Spokane County: one in Deer Park (22 miles north of Spokane) and the other in Medical Lake (15 miles west of Spokane). The Deer Park (population 1,291) branch had deposits of $4.5 million as of December 31, 1970. As of the same date, the Medical Lake (population 3,489) branch held deposits totaling $3.8 million. WTB draws deposits from these areas, and there are no banking offices in the areas between these communities and the Spokane City limits. Therefore, the proposed merger will eliminate some existing competition.

4. Effect on Potential Competition

Under Washington's restrictive branch banking laws, a bank may establish de novo branches only in the city in which it has its principal place of business, in unincorporated areas in the county in which it is headquartered, and in incorporated cities and towns

which do not have a banking office of any commercial bank. 1/ Thus, NBC cannot establish de novo branch offices in the City of Spokane. Nonetheless, NBC could enter Spokane in a manner competitively tantamount to de novo branching. Specifically, NBC could acquire the city's smallest bank, or through nominees it could assist in chartering a new bank in Spokane, 2/ with which it might subsequently merge.

NBC is the second largest of the five statewide banks which dominate commercial banking in Washington and together hold about 75 per cent of all commercial bank deposits. The combined shares of NBC and the state's largest bank exceed 50 per cent of such deposits. NBC's dominant position is perhaps even greater in the area surrounding Spokane. It operates branches in 17 of the 19 counties in this region. NBC is one of the three major statewide banking organizations which operate major regional systems in this area 3/ and control the bulk of its deposits, but it is the only one of these three which does not have offices in the City of Spokane itself. In view of the city's status as the most important economic center in the area, NBC has a very great incentive to enter Spokane in order to make its entire regional operation more efficient and profitable. Clearly, NBC is the most significant potential entrant into the City of Spokane.

Banking in the City of Spokane is highly concentrated. Three banking organizations hold over 90 per cent of commercial bank deposits in the city, and operate 85 per cent of its banking offices. WTB is the third largest banking organization in the city in terms of deposits in banking offices in the city and holds 17.6 per cent of city deposits. These same three banking organizations hold almost 89 per cent of commercial bank deposits in all of Spokane County, WTB holding about 16.4 per cent. NBC holds about 2 per cent of Spokane County deposits.

1/ Revised Code of Washington §30.40.020.

2/ This latter practice is used not infrequently by the large Washington banks.

3/ One of the other two statewide banks only has offices in Spokane. The other limits its operations to the Columbia Basin area which is some 80 miles from Spokane.

In view of NBC's status as a most significant potential entrant into the City of Spokane, and the substantial position held by WTB in that city's highly concentrated banking structure, it is clear that the proposed merger would result in the loss of significant potential competition in Spokane.

The proposed merger would also eliminate WTB as a most significant potential entrant into other areas of eastern Washington which surround Spokane, and in which NBC is a major existing competitor. Banking is highly concentrated in these markets, and, as the largest bank in eastern Washington which has not yet branched out into these areas, WTB must be regarded as among the most significant potential entrants. In fact, because of its base in Spokane and consequent knowledge of this financial center of eastern Washington, it may well have substantially greater incentives to expand in this area than do the larger regional banks operating almost exclusively west of the Cascade Mountains. Thus, the proposed merger would also result in the loss of significant potential competition throughout eastern Washington.

Moreover, in combination with one or more middle-sized banks located elsewhere in the state, WTB could organize a new statewide banking organization able to compete throughout the state with the five present leaders. Since Washington is characterized both by substantial statewide concentration and substantial concentration in every local market, the loss of such a potential for deconcentration has significant adverse economic effects.

Finally, NBC is one of two banks which dominate correspondent services in Washington. These two banks would appear to hold around 70 per cent of the correspondent deposits held by all banks in the state. WTB presently holds a very small share, but it does appear to offer correspondent services to at least six of the 18 independent banks operating in eastern Washington. Given that base, it would appear that WTB is either a present competitor or is on the threshold of being one in providing general correspondent services to small banks in Washington. Its acquisition by one of the two dominant firms in this field will also produce a substantial anticompetitive effect.

5. Conclusion

This merger will eliminate actual and potential competition in commercial banking between the merging banks in the city and county of Spokane, the eastern portion of the State of Washington, and the state as a whole, and will have similarly anticompetitive effects in correspondent services. Also, the trend of consolidations among leading banks in the state, of which this merger is but the most recent example, is likely to be further stimulated. We conclude that this merger would have a significantly adverse effect on competition.

A summary of this report is attached.

Sincerely yours,

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

By: Donald I. Baker
Acting Director of Policy Planning

APR 20 1971

REPORT BY THE

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

to the

Comptroller of the Currency, under the Bank Merger Act

(12 U.S.C. 1828(c)), on the competitive factors

involved in the proposed merger of

Washington Trust Bank, Spokane, Washington

into

The National Bank of Commerce of Seattle, Seattle, Washington

I. THE PROPOSAL

The National Bank of Commerce of Seattle, Seattle, Washington (Commerce Bank), with deposits of $1,129 million, proposes to merge with Washington Trust Bank, Spokane, Washington (Washington Trust), which has deposits of $87 million, under the charter and title of Commerce Bank. Incident to the proposal, the main office of Washington Trust and six branches which are located within the corporate limits of Spokane and one branch in Opportunity, Washington, 8 miles east of Spokane, would become branches of the resulting institution.

At present, Commerce Bank operates 102 offices Statewide, 71 of which are located west of the Cascade Range and serve the more populous regions of the State; 30 are located in the city of Seattle. The bank also has 2 offices approved but not yet in operation.

II. THE COMMUNITIES

Seattle, the leading commercial, industrial, and financial center of the Pacific Northwest, has a population of about 524,000 and a metropolitan area population which includes King and Snohomish Counties of slightly more than 1.4 million. Seattle is also a major transportation center and a gateway to Alaska and the Orient.

Spokane is situated near the eastern border and, with a population of about 169,000, is the second largest city in the State. The metropolitan area has a well diversified economic base, and future prospects appear favorable.

Exhibit C.

III. COMPETITION BETWEEN THE TWO INSTITUTIONS

Washington Trust serves mainly the city of Spokane although it has one branch 8 miles east of the city in Opportunity; Commerce Bank operates Statewide, but does not have an office in the city of Spokane. Because of the State's restrictive branching laws, the bank cannot establish a branch in Spokane except by acquiring an existing bank. The nearest offices of Commerce Bank to Washington Trust are its Medical Lake branch, 15 miles west, and its Deer Park branch, 22 miles north, both in Spokane County. Although each of the proponents derives some loans and deposits from areas served by the other, existing competition is not substantial and, potential for increased competition through de novo branching is limited.

IV. OTHER COMPETITIVE EFFECTS

The relevant banking market is approximated by Spokane County, wherein there are 10 banks operating a total of 48 offices and holding deposits of approximately $464 million. Washington Trust ranks third in the market with about 16 per cent of deposits; Commerce Bank ranks eighth with approximately 2 per cent (data as of June 30, 1970). The resulting institution, with 10 offices, would rank third with approximately 18 per cent of deposits in the market.

Old National Bank of Washington, Spokane, with deposits of $155 million, and First National Bank in Spokane, with deposits of $35 million, both subsidiaries of Washington Bankshares, Inc., Spokane, together hold about 41 per cent of the Spokane market. Seattle-First National Bank, Seattle, the State's largest banking institution, ranks second in the market with about 32 per cent of total deposits. Pacific National Bank of Washington, Seattle, the State's third largest banking institution, ranks fifth in the Spokane market.

Washington has a high degree of concentration of commercial bank deposits in a small number of banks, with the top 2 banks holding about 51 per cent of deposits as of mid-1970. Commerce Bank, with 19 per cent of deposits, ranks second; Washington Trust, with about 2 per cent, ranks eighth among the State's 90 banking institutions.

V. CONCLUSION WITH RESPECT TO COMPETITIVE FACTORS

Consummation of the proposed merger of Washington Trust Bank, Spokane, into The National Bank of Commerce of Seattle would eliminate the State's eighth largest bank and the third largest in the Spokane market

In addition, the proposed transaction would increase the already high level of concentration of banking resources in Washington where the two largest banks, including The National Bank of Commerce of Seattle, hold approximately 51 per cent of total commercial bank deposits. Overall, the effect of the proposal on competition would be adverse.

NOTE

As required by the Bank Merger Act (12 U.S.C. 1828(c)), this report is limited to a report on the competitive factors involved, and is not a recommendation as to whether the application should be approved or disapproved. The term "adverse" as used in the above conclusion is defined at 12 C.F.R. 250.182 (34 Fed. Reg., July 10, 1969, p. 11414); Fed. Res. Bulletin, July 1969, p. 610.

A-3 (5-20-71)

REPORT OF THE

BOARD OF DIRECTORS
FEDERAL DEPOSIT INSURANCE CORPORATION

TO THE

COMPTROLLER OF THE CURRENCY

Pursuant to Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c))

On the competitive factors involved in the proposed merger of

The National Bank of Commerce of Seattle, Seattle, Washington

and

Washington Trust Bank, Spokane, Washington

I. THE FACTUAL SETTING

The National Bank of Commerce of Seattle ("NBC Seattle"), (total resources $1,320,224,000; IPC deposits $981,080,000), was organized in 1889. It operates 106 domestic offices and 6 foreign branches through an Edge Act subsidiary.

Washington Trust Bank ("Washington Trust"), (total resources $102,633,000; IPC deposits $82,878,000), opened for business in 1902. It operates 8 offices, 7 in Spokane proper and 1 in a suburban community six miles to the east. It has not been involved in any merger or similar transaction.

The City of Spokane, located near the Idaho Border, is the regional marketing center for eastern Washington, northern Idaho and western Montana. The city's population declined 6.1 percent from 181,608 in 1960 to 170,516 in 1970, but Spokane County as a whole registered a 3.3 percent gain to 287,487 inhabitants in 1970 as compared with 278,333, in 1960. Agriculture, lumbering, mining, manufacturing, transportation and military activities form a diversified economic base, which enhances prospects for continued population growth, industrial expansion and economic stability.

NBC Seattle operates offices in 30 of the State's 39 counties, including Spokane County, but about half of its offices are within metropolitan Seattle and surrounding King County. NBC Seattle is the second largest commercial bank headquartered in Washington, with 18.8 percent of Statewide commercial bank deposits, the largest commercial bank being Seattle-First National Bank with 32.9 percent of such deposits. NBC Seattle ranks second as well in local commercial bank deposits within King County, its principal trade area, holding 23.0 percent of the commercial bank deposits there.

- more -

Exhibit D

Re: The National Bank of Commerce of Seattle

Washington Trust ranks as the ninth largest commercial bank with offices in the State of Washington, holding 1.6 percent of their aggregate deposits. Its primary trade area consists of the City of Spokane and Spokane County. It is third in size in its marketing area holding 16.3 percent of local commercial bank deposits, while two affiliates of Washington Bancshares, Inc. and Seattle-First National Bank hold 40.8 percent and 31.5 percent respectively, of such local commercial bank deposits.

II. EXISTING AND POTENTIAL COMPETITION BETWEEN THE TWO INSTITUTIONS

Most of NBC Seattle's offices are in other parts of the State, but it has two branch offices in Spokane County, which together hold 1.8 percent of all Spokane County commercial bank deposits. Its Medical Lake Office, the closest to a Washington Trust office, is 15 miles away. Most of the business of these two branches is derived from outside the City of Spokane, although NBC Seattle's Statewide efforts to attract business have undoubtedly generated some business from areas served by Washington Trust. A limited amount of Washington Trust's business is generated from areas served by NBC Seattle's two branches, but the overall business possessed by either bank from areas served by the other is minimal.

The State of Washington permits Statewide branching by merger but de novo branching is limited to (1) the city limits of the head office county, (2) unincorporated areas in the head office county, and (3) unbanked, incorporated areas outside the head office county. Only two unbanked, incorporated communities are open to de novo branching by NBC Seattle in Spokane County but the population of each is so small as to make any such de novo branching unlikely. Establishment of de novo branches by Washington Trust in unincorporated areas of Spokane County and in unbanked, incorporated communities elsewhere is possible but highly improbable in view of Washington Trust's past hesitance in opening de novo branches outside the City of Spokane and the limited number of available locations that would be attractive to Washington Trust for such de novo branching operations.

The proposed merger, therefore, would not eliminate significant existing competition between the two banks or any significant potential for increased competition between them through de novo branching.

III. OTHER COMPETITIVE EFFECTS

Washington Trust is the ninth largest commercial bank operating in the State of Washington, a viable $103 million institution with a proven capacity to compete in the Spokane market with four of the largest banks in the State. Its proposed merger with NBC Seattle, the State's second largest bank, would represent a significant step in further concentrating the State's total commercial bank resources in a relative handful of large institutions, and would encourage other mergers of the State's largest banks. The proposed merger, if approved, would appear to have the following effects: (1) the commercial bank deposits held by the five largest banks in the State would be increased from 77.2 percent to

78.8 percent; (2) NBC Seattle would strengthen its already impressive lead over the next ranking banks in the State, thereby encouraging them to continue the merger race toward five or six Statewide banking systems in a State of 3,409,169 people; (3) one of the few banks of significant size left in Washington would be eliminated as a potential Statewide competitor of NBC Seattle and the other large banks in the State through alternative mergers in which Washington Trust might be the lead bank; and (4) de novo branching in the City of Spokane and in the incorporated areas of Spokane County would be significantly limited since Washington Trust's offices would become branches of a Seattle bank with very limited authority to branch de novo in Spokane County.

NBC Seattle has an alternative merger option, a much smaller $10 million institution, by which to enter the City of Spokane. Since public convenience and needs will be only marginally served by the entry of a fifth large bank into the City of Spokane, NBC Seattle should be required to follow that option if it wishes to enter the City at all, rather than being allowed to eliminate one of the few intermediate size banks remaining in the State of Washington.

IV. CONCLUSION

The proposed merger would not eliminate significant existing competition between the two banks or any significant potential for increased competition between them through de novo branching. It would, however, eliminate the potential for increased competition between them through alternative mergers, restrict de novo branching in Spokane County, add significantly to the already high level of commercial bank concentration which exists in the State of Washington and serve as an undesirable precedent encouraging other mergers among the State's largest banks, thereby further concentrating its commercial bank resources. The Corporation concludes that the proposed merger would have a substantially adverse effect on commercial bank competition in the State of Washington.

NOTE

As required by the Bank Merger Act of 1966 (12 U.S.C. 1828(c)), this report is limited to a report on the competitive factors involved, does not comment on the factors of convenience and needs of the community to be served or the financial or managerial resources or future prospects of either bank or the resulting bank, and is not a recommendation as to whether the application should be approved or disapproved.

# # # # # # # #

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA Plaintiff, v. MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE; and WASHINGTON TRUST BANK, Defendants, and WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, Intervenor.	Civil Action No. 237-71C2

PLAINTIFF'S REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, plaintiff requests that defendants and intervenor, within 20 days after the service of this request, admit that each of the following statements is true for the purposes of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial: */

I

The business of commercial banking is a relevant "line of commerce", (within the meaning of Section 7 of the

*/ As used in this request, "NBC" refers to the National Bank of Commerce of Seattle; "WTB" to the Washington Trust Bank, "Marine" to the Marine Bancorporation, and "Spokane" to the Spokane metropolitan area.

EXHIBIT B

Clayton Act) within which the competitive effects of the merger challenged in this action may be judged.

II

In early 1972, Marine applied to the Board of Governors of the Federal Reserve System for permission to acquire Far West Securities, Inc., a mortgage banking firm whose principal place of business is in Spokane, Washington. On May 1, 1972, the Board of Governors denied approval of the acquisition. Subsequently, Marine applied to the Board for permission to open a branch office of its mortgage banking subsidiary, Coast Mortgage Company, in Spokane; the Board granted approval on October 22, 1972.

III

In 1964, several Spokane citizens applied to the State Supervisor of Banking for a charter for a new state bank to be headquartered in the City of Spokane and to be known as the American Commercial Bank. WTB opposed the chartering of the new bank by means of a law suit, representations before the Supervisor at a public hearing in Spokane, and submissions to the Supervisor.

WTB alleged inter alia that the American Commercial Bank was being organized with a view to eventual sale to a large statewide bank, and that the public convenience and necessity were being served adequately by existing financial institutions in Spokane. A charter for American Commercial Bank was granted in 1965.

IV

The City of Spokane is the second most populous city in the State of Washington and the largest city in eastern Washington. It is located at a bend of the Spokane River, which approaches the city from the east and flows out of

EXHIBIT E

the city to the north. The river is joined at the city by Latah Creek, which flows from the south. The north-south valley formed jointly by the river and the creek delineates a sharp division between a high plateau to the west and rolling hills to the east, and generally indicates the western edge of the city. Through the eastern hills another major valley (hereinafter referred to as "the Valley") is formed by the eastern sector of the river, which leads to the Idaho border about 18 miles away.

V

The Valley is an important route for transcontinental railroads and highways. The principal development of the Spokane metropolitan area has occurred in the Valley. The metropolitan area's major industrial and population concentrations are located in the Valley. The downtown area or central business district of the city is located on the south side of the river. The city has also spread several miles north and south of the central business district. The area's newer suburban residential and commercial developments are found in the northern and southern extentions.

VI

Recently, plans have been announced and projects commenced to commercially develop Spokane's downtown business district. The Crescent and J. C. Penney's department stores have announced a major coordinated development plan involving parts of four downtown blocks. The Crescent will occupy a new 53,000 square foot building adjacent to its Main Avenue building. Penney's has announced plans to occupy a new 180,000 square foot building to be built for

EXHIBIT E

them on Main Street between Post and Lincoln Streets. Both new buildings will be connected to new 1,000 car parking facilities by over-street walkways.

The City Council of Spokane has approved a $1,850,000 Local Improvement District for downtown beautification. The Washington Water Power Company is expanding and remodeling its downtown hydro-electric facility at a cost of $1.5 million. The Spokane Milk Producers Association is building a half-million dollar powdered milk production plant in Spokane. The Darigold Dairy is building a $400,000 milk receiving facility in Spokane. The largest wholesale florist facility north of San Francisco and west of Minneapolis will be in a new $350,000 building being built by the Spokane Flower Growers Association. A new 13,440 square foot air cargo building and a new passenger rotunda twice the size of the present terminal has been proposed by the City-County Airport Board with an estimated cost of $2 million. The Spokane Industrial Park is being developed by the Industrial Development Corporation of Eastern Washington, a non profit corporation instituted by the Washington Water Power Co., whose purpose is to attract new industry to Spokane. Multi-story office buildings are being built in downtown Spokane for the Washington Trust Bank, and the Washington Mutual Savings Bank.

VII

The economic influence of Spokane reaches far beyond the borders of the Spokane County. It is the financial and regional trade center of a region popularly known as the Inland Empire, which encompasses portions of four states. The Inland Empire extends from the Canadian border south to the Blue Mountains in northern Oregon, and from the eastern

EXHIBIT E

slopes of the Cascades in Washington to the western slopes of the Rockies in Montana. Thirty-six counties are included in this area. Spokane, the largest city in the Inland Empire, serves as the distribution center for the area. Spokane banks support agricultural, mining, lumbering and commercial activities in the entire Inland Empire area.

VIII

The Spokane Trade Area (Hereinafter "Trade Area") is a more narrowly defined region within the Inland Empire. It is an economic region of twenty-seven counties in three states. It includes seventeen of the twenty Washington counties lying east of the Cascades (excluded are Yakima, Kittitas, and Klickitat counties), eight counties in northern Idaho, and two counties in northwestern Montana. Spokane retail stores generate a significant amount of retail patronage from these counties. Spokane newspapers dominate the circulation in the Trade Area. Spokane television stations are received throughout the Trade Area. Numerous distribution activities covering most of the counties in the Area are headquartered in Spokane. There are a large number of federal and state government agencies' regional offices located in Spokane.

Agriculture is of major importance economically in the Trade Area. Included in the Trade Area are the major Washington wheat growing regions, and irrigated sectors of intensive agriculture in central Washington. The ten Idaho and Montana counties located in the Trade Area contain wheat lands and diversified farming sections.

The Trade Area contains important mining districts, and Spokane is especially important in serving those in northern Idaho. The Coeur d'Alene mining district in Idaho,

EXHIBIT E

90 miles southeast of Spokane, and the northeast corner of Washington adjacent to Spokane County, are the principal mineral producing areas in the Trade Area. The majority of firms with stock traded on the Spokane Stock Exchange are directly involved with the mining activities in the Trade Area, principally northern Idaho. The U.S. Bureau of Mines and U.S. Geological Survey have regional headquarters in Spokane.

The extensive forests and mills of the Trade Area are an important economic resource. The majority of forested acreage is in Idaho and Montana with a lesser amount in northeastern Washington. Lumber and wood products produced there include plywood, prefabricated housing units, laminated beams, utility poles, and paper products. Spokane is linked to points throughout the Trade Area by several transportation systems.

A low regional population density and the distance between the region's population centers has made transportation facilities important to the Trade Area. The northern transcontinental rail lines that cross the Inland Empire converge at Spokane. Two trunk air carriers and two regional air carriers serve the Spokane International Airport. Twenty-five truck lines serve Spokane from six major highways.

Centrally located in the Trade Area, Spokane has become the focal point for wholesale and retail trade. Spokane County has an exceptionally high level of wholesale and retail trade employment. Gonzaga University is located in Spokane, and has an enrollement of about 2,600. Eastern Washington State College is located in Cheney, Spokane County, 18 miles west of Spokane, and has an enrollement of about 6,300. Spokane is the center for medical facilities and treatment in the Inland Empire.

EXHIBIT E

IX

Farmers & Merchants Bank of Rockford, established in 1906, is a state-chartered bank headquartered in Opportunity, Washington, a unincorporated community in the Spokane metropolitan area. In addition to its head office, it has branch offices in the towns of Cheney and Rockford in Spokane County, National Bank of Commerce has considered acquiring Farmers & Merchants Bank. On November 23, 1966, NBC made a loan of $800,000 to three Spokane Businessmen, J. Emory Hall, August Klaue, and John Layman, to enable them to buy contolling interest in Farmers & Merchants Bank. At the time the loan was made, NBC thought it had an informal understanding with the borrowers that it would be afforded an opportunity to acquire the Farmers & Merchants Bank when the loan matured in December, 1968. During the latter part of 1968, NBC engaged in discussions with Farmers & Merchants Bank's controlling shareholders regarding possible acquisition of the bank. The controlling shareholders of Farmers & Merchants Bank indicated the price for which they would sell the bank. Robert F. Buck, NBC Senior Vice President, made a calculation of the price NBC would be willing to offer for Farmers & Merchants Bank. This offering price was not communicated to Messrs. Hall, Klaue and Layman of Farmers & Merchants Bank. NBC continued to engage in discussions regarding possible acquisition during 1969 and 1970. The last such discussion was held on October 5, 1970. Controlling interest in Farmers & Merchants Bank presently is held by August Klaue and John G. Layman. Farmers and Merchants Bank was considering merger with the American Commercial Bank at the time of its discussions with NBC.

EXHIBIT E

X

Section 30.08.020 of the Revised Code of Washington prescribes certain items which must be contained in the articles of incorporation of a state bank or trust company in Washington. Subsection (7) of that code section requires that the articles of incorporation shall state:

> For a stated number of years, which shall not be less than ten nor more than twenty years from the date of approval of the articles (a) no voting share of the corporation shall, without the prior written approval of the supervisor [of banking], be affirmatively voted for any proposal which would have the effect of sale, conversion, merger, or consolidation to or with, any other banking entity or affiliated financial interest, whether through transfer of stock ownership, sale of assets, or otherwise, (b) the corporation shall take no action to consummate any sale, conversion, merger, or consolidation in violation of this subdivision, (c) this provision of the articles shall not be revoked, altered, or amended by the stockholders without the prior written approval of the supervisor and (d) all stock issued by the corporation shall be subject to this subdivision and a copy hereof shall be placed upon all certificates of stock issued by the corporation.

As a state bank chartered subsequent to the enactment RCW 30.08.020(7), American Commerical Bank, Spokane, is subject to the provisions thereof. Until April 9, 1975, approval of Washington's Supervisor of Banking will be required to permit American Commercial Bank shares to be voted in favor of a merger, sale, consolidation, or conversion of the bank.

In at least five instances since the provision was enacted in 1959, the Supervisor of Banking has granted the requisite approval for mergers of state banks subject to RCW 30.08.020(7).

Bank of Richland, a state-chartered bank, was established in 1963 and was merged into Old National Bank in 1966.

Bank of Kent, a state-chartered bank, was established in 1962 and was merged into Bank of the West in 1969.

Bank of Tacoma, a state-chartered bank, was established in 1963 and was merged into Seattle-First National Bank in 1969.

North West Bank, a state-chartered bank, was established in 1963 and was merged into Old National Bank in 1970.

Ellensburg State Bank, a state-chartered bank, was established in 1967. Its application to merge into the Bank of Yakima was approved by the Federal Deposit Insurance Corporation on October 2, 1972.

XI

Federal law permits the conversion of a state bank into a national banking association so long as the conversion does not contravene state law.

12 U.S.C. § 35 says in part:

> Any bank incorporated by special law of any State of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than 51 per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with any name approved by the Comptroller of the Currency: Provided, however, that said conversion shall not be in contravention of the State law.

Washington law provides for such a conversion on condition of the approval of two-thirds of each class of voting stock in the state bank.

RCW Section 30.49.020 says:

> This section is applicable where there is to be a resulting national bank.

EXHIBIT E

> Nothing in the law of this state shall restrict the right of a state bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed at the time of the action for national banks merging with or converting into a resulting state bank by the law of the United States, and not by the law of this state, except that a vote of the holders of two-thirds of each class of voting stock of a state bank shall be required for the merger or conversion, and that on conversion by a state bank into a national bank the rights of the dissenting stockholders shall be those specified in RCW 30.49.090.
>
> Upon the completion of the merger of conversion, the franchise of any merging or converting state bank shall automatically terminate.

Section 30 of the National Bank Act permits a national banking association to move its main office 30 miles with the approval of the Comptroller.

12 U.S.C. § 30 says in part:

> Any national banking association, with the approval of the Comptroller of the Currency, may change the location of the main office of such association to any other location outside the limits of the city, town, or village in which it is located, but not more than thirty miles distant, by the vote of shareholders owning two-thirds of the stock of such association.

Farmers & Merchants Bank of Rockford is a state-chartered bank established in 1906 and headquartered in Opportunity, Washington. Opportunity is located within thirty miles of Spokane. In addition to its head office, it has branch offices in Cheney and Rockford, Washington.

Bank of Latah, state chartered bank established in 1907, operates its only banking office in Latah, Washington. Controlling interest in Bank of Latah is owned by the William Wernz family. Latah is located within 30 miles of Spokane.

Bank of Fairfield, a state chartered bank established in 1908, operates its only banking office in Fairfield,

EXHIBIT E

Washington. Controlling interest in Bank of Fairfield is owned by the William Wornz family. Fairfield is located within 30 miles of Spokane.

RICHARD J. TORRE
Attorney, Department of Justice

Dated: December 6, 1972

EXHIBIT E

CERTIFICATE OF SERVICE

I, Richard J. Torre, attorney, United States Department of Justice, do hereby certify that I have on this day served a copy of the attached Plaintiff's Request For Admissions on the attorney of record for the intervenor and defendants by placing copies thereof in envelopes, addressed as follows:

R. A. Moen, Esquire
Graham, McCord, Dunn, Moen, Johnston,
& Rosenquist
3900 Seattle-First National Bank Building
Seattle, Washington 98154

Jon D. Hartman, Esquire
Office of the Comptroller of the Currency
Treasury Department
15th Street and Pennsylvania Avenue, N. W.
Washington, D. C.

Daniel M. Gribbon, Esquire
Covington & Burling
88 16th Street, N. W.
Washington, D. C. 20006

which are the last addresses of said attorneys known to me, and the envelopes bearing government franks were deposited by me with the United States Service at Washington, D. C., for delivery as directed.

RJ Torre

RICHARD J. TORRE
Attorney, Department of Justice

Dated: December 6, 1972

EXHIBIT E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff,	)	Civil Action No. 237-71C2
MARINE BANCORPORATION, THE NATIONAL BANK OF COMMERCE OF SEATTLE, and WASHINGTON TRUST BANK, Defendants,	)	DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS
WILLIAM B. CAMP, Comptroller of the Currency, Intervenor.	)	

Set forth below is Defendants' response to Plaintiff's Request for Admissions dated December 6, 1972. Defendants have attempted, where possible, to conform their admissions to Plaintiff's narrative style. Thus, if one of Plaintiff's sentences is repeated, it is admitted. If certain words or sentences are changed or deleted, they are admitted only to the extent specifically indicated, and otherwise denied. Defendants expressly reserve the right to object to the admissibility of such responses, in whole or in part, on the ground of relevancy, materiality, or any other proper ground in any subsequent step or proceeding in this action.

I

Defendants' Response To Request For Admission I.

In six cases decided by District Courts involving challenges of mergers of commercial banks by Plaintiff charging a violation

EXHIBIT F

of Section 7 of the Clayton Act on the basis of alleged elimination of potential competition, five have either seriously questioned the conclusion that "commercial banking" is the relevant "line of commerce" within which the competitive effect of the particular merger should be judged, or have held that such was not the relevant line of commerce. In view of the conflict of authority on this issue, Defendants cannot truthfully admit or deny the matter. However, Defendants favor (and recommend to the Court) the solution to this problem adopted by the District Court in United States v. First National Bank of Maryland 310 F.Supp. 157 (D. Md. 1970) at p. 168, as follows:

> "Thus, it may be necessary, in order not to destroy the usefulness of some of the significant guidelines which have been developed, to confine 'line of commerce' to commercial banking but, at the same time, in order to take into account the relevant facts of life, to consider the activities of financial institutions other than commercial banks as such, in determining whether the effect of an 'acquisition may be substantially to lessen competition, or to tend to create a monopoly.' In that way, those noncommercial bank activities can be taken into account in connection with the effect of the merger upon commercial banking as the line of commerce in the given market."

II

Defendants' Response To Request For Admission II.

Defendants admit the same.

III

Defendants' Response To Request For Admission III.

Defendants admit the same, subject to the following qualification: Any allegation so made by Washington Trust Bank (WTB) in 1964 to the effect that American Commercial Bank was being organized with a view to eventual sale has proved to be entirely unfounded, and American Commercial Bank remains an independent bank today, some eight years later.

IV

Defendants' Response To Request For Admission IV.

Defendants admit the same.

EXHIBIT F

V

Defendants' Response To Request For Admission V.

Defendants admit the same.

VI

Defendants' Response To Request For Admission VI.

Defendants admit the same.

VII

Defendants' Response To Request For Admission VII.

Defendants deny that Spokane is the financial and regional trade center of the vast multi-state area described in Plaintiff's allegation above set forth. Defendants assert that, to the contrary, the area tributary to Spokane, insofar as the business of commercial banking is concerned, does not extend beyond the boundaries of Spokane County in the State of Washington. To the extent that it reaches out of the county at all, it is to the east, toward and into the Idaho panhandle. While the description of the vast multi-state area described by Plaintiff in this Request as the "Inland Empire", and the appellation of Spokane as the capital of the "Inland Empire" is undoubtedly still a favorite expression in the press agentry of the city of Spokane and its boosters, it projects an entirely inaccurate impression when applied to the business of commercial banking, and a highly questionable impression in the area of trade and commerce. There was a time in the past when the state east of the Cascades was oriented toward Spokane. At that time, the eastern part of the state was substantially limited to vast wheat ranches (eastern and southern portions), vaster undeveloped desolate areas (central and Columbia Basin areas), and mountainous forest wilderness (northern portion). At that time, the only area of substantial development in eastern Washington, other than Spokane and its environs, was the rich irrigated orchard lands of the Yakima Valley based on the city of

EXHIBIT E

Yakima, far to the southwest. However, this area had little, if any, economic, banking or business relationships with Spokane. In the last two decades, development of the vast Columbia Basin, comprising an area larger than many eastern states, has stimulated a new growth and development in eastern Washington. However, the banking and economic needs of that area have not gravitated toward Spokane. The Columbia Basin has developed centers of its own at Wenatchee, Moses Lake-Ephrata, the Tri Cities of Richland, Pasco and Kennewick, and elsewhere. To the extent that these areas have need for participation or assistance in their banking and business affairs, they tend to look westward to Portland, Oregon and Seattle, not eastward to Spokane. This is also the case with respect to the Yakima Valley. By the same token, Spokane does not now look to the Columbia Basin nor the Yakima Valley for its business needs.

VIII

Defendants' Response To Request For Admission VIII.

Defendants deny that the "Spokane Trade Area" consists of an "economic region" of twenty-seven counties in three states.

Defendants admit that some retail stores in Spokane enjoy a limited retail patronage from areas outside the Spokane metropolitan area, but subject to the qualification that, because of the vast, largely uninhabited areas which separate Spokane from other populated areas in eastern Washington to the north, west and south, only a negligible portion of such retail patronage has its origin in the State of Washington outside Spokane County.

Defendants admit that Spokane newspapers enjoy a substantial circulation in eastern Washington generally exclusive of Yakima and Kittitas and Klickitat counties, and that due to the moderate terrain of much of eastern Washington, Spokane television stations are received in much of eastern Washington and in substantial areas of the neighboring states.

EXHIBIT F

Defendants admit there are a number of regional offices of federal and governmental agencies located in Spokane, but deny that the various "regions" administered by such offices are either uniform among themselves or have any material relationship to the vast geographical area designated by Plaintiff in this Request.

Defendants admit that agriculture is of major importance economically in eastern Washington, northern Idaho, and western Montana generally (outside of the mountainous and arid areas of those regions), including major wheat growing regions in Washington and in the Idaho and Montana counties referred to, and irrigated sectors of intensive agriculture in central Washington, but as to these agricultural areas (with the exception of Spokane County and portions of adjacent counties), Defendants deny that a dominant relationship with Spokane exists.

Defendants admit that the Coeur d'Alene mining district in northern Idaho, some 90 miles from Spokane, is an important mining district, that there is some commercial mining in the northeast corner of Washington, and that Spokane enjoys a substantial business relationship with these mining areas. Defendants also admit that the U. S. Bureau of Mines and U. S. Geological Survey have regional offices in Spokane, and that a majority of the firms with stock traded on the Spokane Stock Exchange are involved in mining activities in northeastern Washington, the Idaho panhandle or western Montana.

Defendants admit that there are extensive forests and a substantial number of lumber mills in the twenty-seven counties referred to in this Request for Admission, with the larger part of the forested acreage in Idaho and Montana, and that wood products produced include plywood, prefabricated housing units, laminated beams, utility poles and paper products, but as to the forest product industry throughout this area, Defendants deny that

EXHIBIT D

a dominant relationship with Spokane exists.

Defendants admit that Spokane is linked to points throughout eastern Washington, northern Idaho and western Montana, including the twenty-seven counties referred to in this Request for Admission, by several transportation systems, that there is an extremely low population density and long distances between population centers in said twenty-seven counties, and that transportation facilities are important in the entire region. Defendants admit the northern transcontinental rail lines pass through Spokane, that two trunk air carriers and two regional air carriers serve the Spokane International Airport, and Defendants will take Plaintiff's word for the fact that twenty-five truck lines serve Spokane from six major highways.

Defendants deny that Spokane has become or is the focal point for wholesale and/or retail trade in the twenty-seven counties referred to in this Request for Admission, or the focal point of any comparable area. Defendants deny that Spokane has an exceptionally high level of wholesale and retail trade employment. Defendants admit that Spokane is a center for medical facilities and treatment serving a large portion of eastern Washington, northern Idaho and western Montana.

Defendants admit that Gonzaga University is located in Spokane and has an enrollment of about 2,600, and that Eastern Washington State College is located in Cheney, 18 miles west of Spokane, and has an enrollment of about 6,300.

With respect to this Request for Admission No. VIII, Defendants further deny each and every statement contained therein to the extent that the same are not herein expressly admitted.

IX

Defendants' Response To Request For Admission IX.

Defendants admit that Farmers & Merchants Bank of Rockford, established in 1906, is a state-chartered bank with its principal office in Opportunity, Washington, an unincorporated community in

EXHIBIT F

the Spokane metropolitan area, and that it has branch offices in the towns of Cheney and Rockford in Spokane County.

Defendants admit that on November 23, 1966, The National Bank of Commerce of Seattle (NBC) made a loan of $800,000 to three Spokane businessmen, J. Emory Hall, August Klaue, and John Layman, to enable them to buy the controlling interest in Farmers & Merchants Bank, and that, at that time, NBC thought that it had an informal understanding with the borrowers that it would be afforded an opportunity to acquire the bank when the loan matured in December, 1968.

Defendants admit that during the latter part of 1968, NBC engaged in discussions with the controlling stockholders of Farmers & Merchants Bank regarding possible acquisition of the bank, and that, in this connection, Robert F. Buck, an NBC Senior Vice President, made some calculations to determine a price range for the stock of said bank which would justify serious consideration by NBC. Defendants deny that any serious negotiations resulted from these discussions, because the controlling stockholders indicated an asking price approximately twice as much as Mr. Buck's calculations indicated would be acceptable, and indicated in other ways that they were not really interested in selling. Defendants deny that NBC ever reached the point of determining an "offering price" for the bank's stock, or ever made an offer for the stock, or ever communicated to Messrs. Hall, Klaue or Layman the calculations made by Mr. Buck.

Defendants admit that controlling interest in Farmers & Merchants Bank is presently held by August Klaue and John G. Layman; but Defendants deny that said bank is now for sale, or that there is any reasonable probability that it could be purchased in the reasonably foreseeable future for an acceptable price. Defendants further deny that NBC could effectively compete in the Spokane metropolitan market with but a single office in

EXHIBIT D

the unincorporated suburb of Opportunity.

Based on reasonable inquiry into the matter, Defendants deny that Farmers & Merchants Bank ever considered a merger with American Commercial Bank to be possible.

X

Defendants' Response To Request For Admission X.

Defendants admit that subsection (7) of Section 30.08.020, Revised Code of Washington, is as set forth in Plaintiff's Request for Admission No. X, and that American Commercial Bank is subject to the provisions thereof until April 9, 1975. Defendants also admit that in the five instances set forth in this Request No. X, the Supervisor of Banking has granted the requisite approval for merger of state banks subject to RCW 30.08.020(7). Defendants deny, however, that such approval was granted by the Supervisor in any of these instances except for just cause arising out of current problems in accordance with standards established by his office.

XI

Defendants' Response To Request For Admission XI.

Defendants admit that federal and Washington State law provide for and permit the conversion of state banks into national banks, provided the conversion is for a proper purpose and does not contravene state law, and that federal law permits a national bank to move its main office 30 miles with the approval of the Comptroller. Defendants deny, however, that either federal or state law permits or authorizes a state bank to be converted into a national bank, or the main office of a national bank to be moved as a part of a plan or scheme to establish a branch for another national bank which that bank is forbidden to establish directly de novo by Washington state law, such as the plan or scheme proposed by Plaintiff in the case at bar for the establishment of a branch by NBC in the City of Spokane.

EXHIBIT F

Defendants admit that the portions of statutes quoted by Plaintiff in this Request for Admission No. XI are accurately quoted, and that the facts with respect to the three state banks mentioned are true, except that Defendants deny that the Wernz family controls the Bank of Fairfield, and further denies that either the main office of the Bank of Latah or the main office of the Bank of Fairfield is located within thirty miles of Spokane, measured by the nearest traveled route. Defendants deny that any of such banks are for sale.

Respectfully submitted,

R. A. Hoen

James Wm. Johnston

Attorneys for Defendants

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and

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Of Counsel

Dated: January , 1972

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE; and WASHINGTON TRUST BANK Defendants, and WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, Intervenor.	Civil Action No. 237-71C2

INTERVENOR'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS

Set forth below is Intervenor's Response To Plaintiff's Request For Admissions. Intervenor has attempted, where possible, to conform its admissions to plaintiff's narrative style. Thus, if one of plaintiff's sentences is repeated it is admitted. If certain words or sentences are changed or deleted they are admitted only to the extent specifically indicated, and otherwise denied. Reasons for denials and/or objections to par

of plaintiff's request are set forth.

I

Intervenor admits that the business of commercial banking is the relevant "line of commerce", (within the meaning of §7 of the Clayton Act) within which any alleged anticompetitive effects of the merger challenged in this action are to be judged.

Intervenor objects to any attempt by plaintiff, on the eve of trial, to imply by use of the words "a relevant 'line of commerce'" that there may be others which bear on the Clayton Act part of this case. Intervenor further objects to plaintiff's attempt to limit the Court's analysis of procompetitive effects of this merger to those relating to the "business of banking". In analyzing the procompetitive aspects of a merger under the rule of convenience and needs, intervenor appropriately considers all competition in which a bank may meet or in which it may be engaged and invites this Court to do likewise.

II

Intervenor admits §II of plaintiff's Request.

III

Intervenor objects to §III of plaintiff's Request as being of no substantial importance in the trial of this matter. It is particularly so as plaintiff is again asking this Court to consider chartering activities (this time by the state banking supervisor) taking place eight years ago under a former State Banking Supervisor (Mr. McMurray) who will be called by plaintiff at trial.

EXHIBIT G

IV

Intervenor admits that Spokane is the second most populous city in Washington and that the City is largest in terms of population in Washington, east of the Cascade Mountains. Intervenor objects to the remaining language in Section IV as being of no substantial importance at trial.

V

Intervenor admits that the Spokane River Valley is a route for railroads and highways. Development has occurred in the Valley and this relates to the Spokane Metropolitan Area. Industrial and population concentrations are located in the Valley. Downtown Spokane City (Central business district) is on the southside of the river. The City is also situated north and south of downtown Spokane City. Suburban residential and commercial developments are more recent in the northern and southern sections of the Spokane Metropolitan Area, than elsewhere in the area.

VI

Plaintiff admits the first sentence of §VI. One of the major additions to Spokane's downtown business district will be the advent of the National Bank of Commerce as a result of this merger.

Intervenor further admits that the announcements ascribed to the Cresent and J. C. Penny's department stores were in fact made, but does not thereby intend to admit or deny the truth of any facts allegedly contained in the announcements.

Intervenor admits City Council approval of the money for downtown beautification, as this is consistent with the council's

EXHIBIT G

need to promote a Fair to be held in 1974. The expansion and remodeling of Washington Water Power's downtown hydroelectric facility is in part the result of extensive storm damage to its dam in the Spokane River. The activities attributed to the Spokane Milk Producers Association and the Darigold Dairy are admitted.

Consideration of the relative size of the wholesale florist facility proposed for a building of the Spokane Flower Growers Association is objected to on the grounds that it is of no substantial importance in the trial of this matter. The fact of the Association's building the building is admitted. The proposals of and estimates of the City-County Airport Board are admitted. The purpose of the Industrial Development Corporation of Eastern Washington is denied. The existence of the Spokane Industrial Park is admitted. The building of an office building in which Washington Trust Bank will rent space is admitted. The building of a building for the Washington Mutual Savings Bank is admitted.

VII

Intervenor objects to being called upon to admit to vague, undefined conclusions such as the extent of Spokane's economic influence and the first sentence in §VII is denied. Intervenor further denies that the concept of an "Inland Empire" has any real meaning in fact or in theory. §VII is really definitional in character and plaintiff may adopt any definition and any descriptive term it desires.

EXHIBIT C

VIII .

Intervenor neither admits or denies so much of §VIII as is definitional, as plaintiff is entitled to define phrases as it sees fit. Intervenor admits that Spokane retail stores are patronized by persons residing in the twenty-seven counties indicated. Intervenor denies Spokane newspapers dominate anything. Intervenor does not know where, throughout the twenty-seven counties Spokane television stations are received. Intervenor admits that some distribution activities related to some of the twenty-seven counties are headquartered in the area and that there are regional offices of federal and state agencies in Spokane city.

Intervenor admits that agriculture is important in the twenty-seven counties, including wheat lands and diversified farming sections.

Intervenor admits that mining is important in some of the twenty-seven counties and that Spokane is 90 miles from the Coeur d' Alene mining district in Idaho. Intervenor further admits that the Spokane Stock Exchange handles trades in stock of mining companies located within plaintiff's twenty-seven counties, and that the U. S. Bureau of Mines and U. S. Geological Survey are located in Spokane.

Intervenor admits that forests and mills are an important economic resource, and that most of the forests are located in Idaho and Montana, and that plywood, prefabricated housing units laminated beams, utility poles and paper products are produced. Intervenor further admits that transportation systems exist throughout the twenty-seven counties.

EXHIBIT G

Intervenor admits that the population of the twenty-seven counties is low and that there are long distances between population centers. Spokane is a railroad junction. While intervenor admits that the air carriers stated operate from the Spokane airport, intervenor denies any inferences that this service is adequate or in any way enables Spokane to be considered an integral part of any other area or economic unit.

Intervenor admits Gonzaga University is located in Spokane and has the approximate enrollment indicated. Intervenor also admits the facts as to Washington State College.

IX

Intervenor admits that Farmers & Merchants Bank of Rockford, established in 1906, is a state-chartered bank headquartered in Opportunity, Washington, an unincorporated community in the Spokane metropolitan area. In addition to its head office, it has branch offices in the Towns of Cheney and Rockford in Spokane County. National Bank of Commerce has considered acquiring Farmers & Merchants Bank.

Intervenor objects to the remainder of Section IX, particularly the narrative form and assertions involving the intentions of individuals performing certain acts absent testimony of live witnesses at trial on these points there is no way for intervenor or the Court to know what was really in the minds of the individuals or the purpose for which they acted.

EXHIBIT G

X

Intervenor admits that Subsection (7) of Section 30.08.02 of the Revised Code of Washington is as set forth in plaintiff's section X, and that American Commercial Bank is subject to the provisions thereof. Intervenor further admits that the state banking supervisor has the power to grant approval pursuant to standards established by his office. Intervenor further says that the five instances of approval, cited by plaintiff and not denied by intervenor, show how strictly this statute is applied.

XI

Intervenor admits the facts and existence of the statutes contained in §XI.

/s/ Jon D. Hartman
Jon D. Hartman

/s/ Thomas H. McLachlen
Thomas H. McLachlen
Attorneys for Intervenor

Dated:

EXHIBIT G

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE; and WASHINGTON TRUST BANK, Defendants, and WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, Intervenor.	Civil Action No. 237-71C2

PLAINTIFF'S REPLY TO DEFENDANTS' AND INTERVENOR'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSIONS

The following constitutes plaintiff's reply to the responses of defendants and intervenor to plaintiff's Request for Admissions, filed pursuant to Rule 36 of the Federal Rules of Civil Procedure, dated December 6, 1972.

Request for Admission I

Defendants have retreated from their previous position that "commercial banking" is a relevant "line of commerce", within the meaning of Section 7 of the Clayton Act, within which the competitive effects of the challenged merger should be judged. Defendants now state that "In view of the conflict of authority on this issue,

EXHIBIT H

Defendants can not truthfully admit or deny the matter," citing previous District Court decisions in bank merger cases.

Plaintiff contends that several Supreme Court decisions have established beyond question that, in a § 7 case involving the merger of two commercial banks, commercial banking is a relevant line of commerce within which to measure the merger's competitive effects. United States v. Philadelphia National Bank, 374 U.S. 321 (1963); United States v. Third National Bank in Nashville, 390 U.S. 171 (1968); and United States v. Phillipsburg National Bank, 399 U.S. 350 (1970). These three cases are all the § 7 bank merger cases which have been decided by the Supreme Court; in each of them, the District Court's use of a line of commerce broader than commercial banking was held to be error. In light of these Supreme Court decisions, in a § 7 case challenging the merger of commercial banks, the business of commercial banking is a relevant line of commerce within which to assess the merger's competitive effects.

The "conflict of authority" cited by defendants is in reality a conflict between several District Courts and the Supreme Court.

The "solution" of the District Court in United States v. First National Bank of Maryland, 310 F. Supp. 157 (D. Md. 1970), which the defendants recommend to this Court at page 2 of their Response to Plaintiff's Request for Admissions, is in direct conflict with the Supreme Court decisions cited above. Plaintiff maintains that it is not possible to "confine 'line of commerce' to commercial banking but, at the same time. . . consider the activities of financial institutions other than commercial banks" in deciding the competitive aspects of this case. Such an approach is fundamentally inconsistent; if a line of commerce of commercial banking is to be used, then the Court can not consider non-bank financial institutions in deciding the issues in this case without, in effect, broadening the line of commerce beyond commercial banking.

In reply to intervenor's response on this subject, the use of the words "a relevant line of commerce" was used consistently with the language of § 7 that a merger violates the Clayton Act which results in a substantial lessening of competition in "any line of commerce" in any section of the country. The language of the Act reflects the fact that the effects of a merger may occur in more than one line of commerce; however, in this case, plaintiff has alleged anticompetitive effects in the line of commerce of commercial banking only.

Intervenor has admitted, with a qualification, that commercial banking is "the relevant line of commerce (within the meaning of § 7 of the Clayton Act) within which any alleged anticompetitive effects of the merger challenged in this action are to be judged."

Request for Admission II

Admitted by defendants and intervenor.

Request for Admission III

Admitted with qualification by defendants.

Plaintiff believes that intervenor has not stated adequate grounds for his objection to this request, and therefore requests that he admit or deny the same.

Request for Admission IV

Admitted by defendants. Admitted in part by intervenor. Plaintiff believes that intervenor has not stated adequate grounds for his objection to this request, and therefore requests that he admit or deny the same.

Request for Admission V

Admitted by defendants. Admitted in substance by intervenor.

Request for Admission VI

Admitted by defendants. Admitted in substance, with minor exceptions, by intervenor.

Request for Admission VII

Denied by defendants and intervenor.

Request for Admission VIII

Admitted in part and denied in part by defendants and intervenor.

Request for Admission IX

Admitted with qualifications by defendants. Admitted in part by intervenor. Plaintiff believes that intervenor has not stated adequate grounds for his objection to this request, and therefore requests that he admit or deny the same.

Request for Admission X

Admitted with qualifications by defendants and intervenor.

Request for Admission XI

Admitted with qualification by defendants. Admitted by intervenor.

Respectfully submitted,

RICHARD J. TORRE

ALLAN S. HOFFMAN

PHILIP L. VERVEER

Dated: January 8, 1973

[1] UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

No. 237-71C2

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE, ET AL, DEFENDANTS

[Filed in the United States District Court, Western District of Washington, Jun. 22, 1973. Edgar Scofield, Clerk. By M. Deputy]

TRANSCRIPT OF PROCEEDINGS held in the above-entitled and numbered cause in the above-entitled court before the Honorable WILLIAM N. GOODWIN, United States District Judge, on Monday, January 8, 1973, at the United States Courthouse, Tacoma, Washington.

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[2] APPEARANCES

RICHARD J. TORRE,
ALLAN S. HOFFMAN,
PHILIP L. VERVEER, and
RONALD SILVERMAN, Attorneys, Antitrust Division, Department of Justice, appearing for and on behalf of Plaintiff;

JAMES WILLIAM JOHNSTON and
R. A. MOEN (of Graham, McCord, Dunn, Moen, Johnston & Rosenquist), and
DANIEL M. GRIBBON, and
CHARLES LISTER, (of Covington & Burling), appearing for and on behalf of Defendants;

JON HARTMAN and
THOMAS McLACHLEN, appearing for and on behalf of Intervenor.

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[3] PROCEEDINGS

THE COURT: I am sorry, gentlemen, that I was late. I was at the Supreme Court ceremonies this morning as a representative of the Federal Courts, and didn't realize that it would take so long, and that so many people would say so many things about how nice the Judges are and what a great court it was.

All right, gentlemen, are you ready?

MR. TORRE: Ready for the plaintiff, your Honor.

MR. MOEN: The defendants are ready, your Honor.

MR. HARTMAN: The intervenors are ready, your Honor.

MR. TORRE: As a preliminary matter, your Honor, Mr. Silverman, of our staff, has just joined the Department of Justice. He has not been admitted to the Bar in the District of Columbia, however, he has passed the Bar in the District of Columbia, and we would ask the Court to admit him for the purposes of this trial.

THE COURT: All right, he will be admitted.

MR. TORRE: My name is Richard Torre, and I am counsel for the United States. My co-counsel are [4] Mr. Hoffman, Mr. Verveer and Mr. Silverman.

May it please the Court, this case has been brought under Section 7 of the Clayton Act, the anti-merger statute, to permanently enjoin the proposed merger of the National Bank of Commerce of Seattle and the Washington Trust Bank.

The National Bank of Commerce of Seattle and the Washington Trust Bank of Spokane have agreed to merge, and that proposed merger has received the approval of the appropriate regulatory agency, the Comptroller of the Currency, who is the intervenor in this action. The government will present evidence in its case in chief which will show that the proposed merger may substantially lessen potential competition in violation of Section 7. Competition will be lessened in the line of commerce of commercial banking in each of four sections of the country, the Spokane metropolitan area, Spokane County, Eastern Washington, and the State of Washington.

The parties have agreed that the Spokane metropolitan area is a relevant section of the country in which to evaluate the competitive effects of this merger within the meaning of Section 7 of the Clayton Act.

The intervenor and plaintiff have agreed that [5] commercial banking is to be used to decide the Section 7 aspect of this case. The plaintiff will show that the proposed merger will lessen potential competition in Spokane County through statistical and documentary exhibits, and through the testimony of its expert economist, Robert Smith. This evidence will prove that, one, that Spokane and other sections of the country are very highly concentrated, and that the National Bank of Commerce is a significant potential entrant into the Spokane metropolitan area banking market.

The government's evidence will demonstrate that the National Bank of Commerce possesses the capability and incentive to enter the Spokane market in a full competitive manner, rather than by acquiring the Washington Trust Bank, a leading bank in that market.

The plaintiff's other economic experts, Mr. Michael Marston, Mr. Warren Cooley, as well as statistical and documentary exhibits, will prove that the Spokane area is growing economically and is likely to continue to grow. The evidence will also show that Spokane is a trade center of Eastern Washington, and a region popularly known as the Inland Empire. These economic characteristics of Spokane, and other [6] incentives which will be proven by testimony and documents will show that Spokane is an attractive market for entry by the National Bank of Commerce.

One of the issues in this case are whether there are means of entry into this market, for the National Bank of Commerce to enter Spokane, other than the proposed merger. The plaintiff's pre-trial brief sets forth several possible methods which N B C could use to enter Spokane. Among these methods is to sponsor, and subsequently acquire, a bank in that market. The plaintiff will introduce the testimony by deposition of the late W. W. Witherspoon, former Chairman of the Board of the Washington Bank Shares, to prove that this means of entry

has been practiced in the state, that it has been done with the knowledge, and at times with the encouragement of the Comptroller of the Currency.

Documents and depositions will also be introduced to prove that the National Bank of Commerce itself has sponsored a new bank which it intended to acquire. It did so with the assistance and cooperation of the Comptroller of the Currency, William B. Camp, who, as plaintiff's evidence will also show, knowingly consented to such sponsorship and mergers of sponsored banks in other areas of the state.

[7] The evidence will also show that the elimination of the National Bank of Commerce as a significant potential competition into the Spokane market will substantially lessen competition in violation of Section 7 in two ways. One, it will eliminate the probable deconcentration which would likely result from the National Bank of Commerce's entry de novo or by a small foothold acquisition in the Spokane market area.

Two, it will eliminate the pro-competitive influence which National Bank of Commerce, as a potential competitor exerts in the Spokane market area, because of its potential to enter and deconcentrate.

The evidence will also show that it is the loss of N B C's important and outstanding capacity to deconcentrate that results in a substantial lessening of potential competition and in violation of Section 7 of the Clayton Act.

Plaintiff will also call Mr. Joseph McMurray, former supervisor of banking for the State of Washington who is presently supervisor of banking for the State of Alaska to give expert testimony, and to present documentary and statistical exhibits of other anti-competitive effects by the proposed merger. That will conclude my opening, your Honor.

[8] THE COURT: All right, Mr. Moen, I'd like to hear from you.

MR. MOEN: If it please the Court, for the record I am Mr. Moen. I am with the law firm of Graham, McCord, Dunn, Moen, Johnston & Rosenquist, 1001 Fourth Avenue, Seattle, Washington and also at counsel

table with me is Mr. William Johnston with the same law firm and same address.

The record should also show that Daniel M. Gribbon of 888 16th Street, Washington, D.C. is also appearing for the three defendants.

Ordinarily, your Honor, when I represent a defendant I prefer to reserve my opening statement until I've heard the plaintiff's case. However, in this particular case, I thought it would be proper if I would state our position and state some of the issues so that the Court would know what they were before hearing the plaintiff's testimony.

THE COURT: That's what I'm interested in and that's why I asked to hear from you.

MR. MOEN: Then I may be asking permission to supplement my remarks before we put on our case.

The issues in this case in my opinion are quite simple and many of the facts that go into evidence as statistics and exhibits are quite [9] complex and I think there has been a whole mountain pile of paper used in the preparation of this case and a great deal of this paper includes the Complaint and Answer and interrogatories and what not.

The National Bank of Commerce is described in those documents as a statewide bank and the evidence in this case is going to show that this is true only in a very limited sense.

The evidence is going to show the State of Washington is not a single banking market but composed of a great many markets. The National Bank of Commerce is in a lot of those markets but not in all of them.

For example, it is not here in the City of Tacoma and it is not in the City of Everett but three of our principal competitors are in both of those banking markets; and the National Bank of Commerce is not in the City of Spokane, but three of our four main competitors are in the City of Spokane.

This means when you look at those four major markets, Seattle, Tacoma, Everett and Spokane, that the National Bank of Commerce is the only bank of the five

larger banks in the state whose offices are limited to only one of the four major markets.

The entry of these competitors into those markets is of comparatively recent occurrence, [10] for example, the Seattle-First National Bank, the biggest bank in this state with assets of maybe half a billion dollars in excess of Commerce, is in all four markets. The Pacific National Bank of Washington, the third largest bank in the state —they are in all four markets.

The Peoples National Bank, the fourth largest bank in the state, is in three of the four markets and the Old National Bank of Spokane is in two of these major markets. The Old National Bank of Spokane came into the Seattle market in 1970. The Seattle-First National Bank came into Tacoma in 1969. The merger of the Pacific National Bank and the National Bank of Washington took place in 1970.

Now, to restore some of the competitive balance—this is kind of a background which the present merger was worked out—to restore the competitive position, Commerce arranged a merger with the Washington Trust Bank of Spokane. The Washington Trust Bank of Spokane, the evidence will show, is a very local bank. Its business is limited almost entirely to the City of Spokane. The National Bank of Commerce is not in the City of Spokane, is not there with any real competitive presence. The Washington Trust Bank does not operate in any other area. We will show [11] that the service area of the Washington Trust Bank consists only of the city limits, the area within the city limts of Spokane and a few populated areas outside of the city limits and then an area which extends eastward out towards Idaho perhaps within an area of—maybe measured it is about six miles to the city limits or maybe eight miles, that is if you measure from downtown Spokane.

Now, to put through a merger of this kind of course needs the approval of the Comptroller of the Currency. I might say at this point that all these other mergers that preceded this one, all needed of course the approval of the Comptroller and in none of these cases did Justice see fit to bring suit as they have in this case.

THE COURT: That is the only one?

MR. MOEN: Yes, your Honor, this is the first case so far as I know—in the State of Washington, that is.

THE COURT: Where the Antitrust Division of the Department of Justice has entered in?

MR. MOEN: Yes. The other three mergers were not —they were put through. But, your Honor, a merger like this, you see, requires the approval of the Comptroller. This is not [12] a perfunctory act to apply to the Comptroller for approval of a merger. It requires a great deal of statistics.

Under the Bank Merger Act, the Comptroller is required to send copies of the application to the Department of Justice, to the Federal Reserve Board, to the Federal Deposit Insurance Corporation and each of those three governmental agencies have the right, I think it is their statutory duty, to report to the Comptroller on the competitive factors involved in the merger. This was done in this case and the Justice Department filed a strongly adverse report and as a consequence the Comptroller set the matter down for a public hearing which was held in the office of the Regional Administrator in Portland in July of 1971.

In September of 1971, two months later, the Comptroller rendered his decision and approved the merger. The Justice Department then has 30 days in which they can file suit and this is what they did and that brings us up to the point of this suit.

Now, a suit of this kind under the Clayton Act really involves two basic issues. The first issue is as to whether or not there has been a lessening of competition and that is what the statute prohibits; that is, a lessening of competition in any line [13] of commerce in any section of the country.

Of course the Comptroller in granting his permission for the merger has passed on this subject and has found that there was no lessening of competition. If the Comptroller is correct in this decision, then of course there's nothing further to be ruled on in this case and the injunction should be dissolved and the suit dismissed. However, if the Court should find that there has been a

violation of Section 7 of the Clayton Act then there is a second major issue and that is whether the anti-competitive effects of the proposed transaction, whether those effects are clearly out-weighed in the public interest by the probable effect of the merger in meeting the convenience and needs of the community to be served.

Now, before you get to either of these two basic issues there are two preliminary issues and one is to determine the relevant line of commerce and the second is to determine the section of the country in which the alleged lessening of competition is supposed to occur.

In this particular case the government is urging that the relevant line of commerce is commercial banking. We agree to that to a certain extent but we contend that the commercial banking is something more [14] than a narrow line of competition for commercial banks for which Justice is contending. We contend that there are other financial institutions that must be considered in determining whether or not there is a degree of competition in the market. I am referring to such things as mutual savings banks, the savings and loan associations, the Federal Fram Banks in Spokane and other institutions that are active in obtaining deposits or in making loans. We contend that in a potential competition case any prudent banker would take a good look at where he was going to get his deposits and where he is going to make his loans before they put in a new bank in any given section of the country.

With respect to the section of the country we contend that the banking market area in Spokane which extends down into Idaho is a section of the country with which the Court is concerned. Mr. Torre in his opening statement mentioned other sections of the country, Spokane County and Eastern Washington and the State of Washington and we reject all three of these as being sections of the country. We don't think that the area outside of Spokane is sufficiently important to make a real contribution to constitute [15] a section of the country, although we submit that if it is, we think the result would be exactly the same. So far as the State of Washington and Eastern Washington is concerned we contend there

is or that they are not sections of the country for the reason that they do not constitute a banking market because each of these areas is composed of numerous banking markets.

THE COURT: Are you including Yakima?

MR. MOEN: Eastern Washington, I think, includes twenty counties, East of the Cascade Mountains includes Yakima, yes.

THE COURT: Walla Walla, Wenatchee?

MR. MOEN: Yes, all are in the area, yes, sir, east of the Cascade Mountains, your Honor.

THE COURT: Well, let's see if I'm understanding you, Mr. Moen, what you're telling me, that Walla Walla, for example, would not be a part of the Spokane banking market?

MR. MOEN: We contend that Wenatchee would have its own banking market. We contend that Walla Walla would have its own. Your Honor, Yakima, Walla Walla have their own banking market and we contend that the Spokane—and we contend that those areas are not oriented to the Spokane area but down towards [16] Portland or maybe over to Seattle but not to Spokane.

Now, Mr. Torre said the only issue in the case is really is the issue of potential competition. When the Complaint was filed they also alleged a violation of Section 7 of the Clayton Act with respect to actual and direct competition and also with respect to correspondent banking. Those issues are put out of the case and the only issues left in the case is whether or not we have—

THE COURT: (Interposing) Let me hear you say that again. I didn't quite get it.

MR. MOEN: (Continuing) The Complaint was filed —when the Complaint was filed the Complaint alleged that this merger would violate Section 7 because it would eliminate active direct competition between the two banks, in commercial banking, and that it would eliminate actual and direct competition between the two banks in correspondent banking.

THE COURT: Do you mean the Washington Trust and the N B C? It would eliminate competition between those two?

MR. MOEN: Yes, between those two banks insofar as competition between the correspondent banking services. They have since dropped that issue and also dropped now and conceded there is no [17] actual direct competition between these two banks, so the actual direct or horizontal cases are now out of it. So we are faced only with this issue of potential competition.

Now, as I understand the government's theory, in order to show a lessening of competition they contend that the National Bank of Commerce is already a factor in the market and they influence the banking practices and policies that take place in the Spokane market. Our evidence will show that that is not the fact. Our evidence will show that Commerce is not in the Spokane market and any action they take in the market has no effect whatsoever, that is, on interest rates or banking practices or policies that take place there.

THE COURT: It is my understanding that it is the contention of the Justice Department that the fact that the N B of C might enter the market is the thing that has an effect on the competitive practices of the banks already in the market, is that the complaint?

MR. MOEN: The doctrine, yes. The doctrine of potential competition that some day in the future that this might develop and quite obviously the only way it can develop is if Commerce some way gets into the Spokane market area where Washington Trust Bank [18] already is or I should say if Washington Trust Bank gets out of the market and into some other area. Now, as far as the second one is concerned I don't think in their answers to the interrogatories or in their pleadings we have seen anything where the Washington Trust Bank might set up a bank in order to be in competition with Commerce.

[19] It was very obvious when we looked at it the other way, but the big problem is, can Commerce go into Spokane and become competitive in that market.

Now we contend that to go into Spokane, we must have a means of entry, and without a means of entry, there can never be any potential competition between the two banks. We further contend that we are barred by the statutes of

Washington from starting a de novo bank in Spokane. Our statutes say that we can go in and start a branch in a new town only by taking over an existing bank. Justice has come up with four or five devious schemes of one kind or another whereby they say that we could go in there and get a branch. We contend that they are obviously an evasion of our statute, also a direct violation of our statute.

THE COURT: Let's put it this way, assume that you could, just for the sake of argument assume that you could, would that in any way better the competitive atmosphere in the Spokane area, as contrasted with a merger with the Washington Trust?

MR. MOEN: Our evidence will show that we don't think that we would go in even for economic reasons, if we had to go in with a single bank and could not establish any branches, which of course we would be prohibited from doing. So that we contend [20] that with a city as large as Spokane, it is not economical to go into the city and set up, and try to operate with one banking office.

We contend that this is the end of the case, because there is obviously no violation of Section 7. However, if the Court should feel that we are wrong, and come to the conclusion that there was a violation of Section 7, then you are going to have the second thing to think about, which is the needs and convenience of the public. We will put on evidence as to what we think these needs and conveniences are. We will show that there are a number of benefits to the banking customers in Spokane, with the increased loan limits, with new loans, agricultural loans, mining loans, FHA loans, which the Washington Trust Bank does not now give, new services, such as expand the trust services, international banking, and the computer services, and a number of others, and at the conclusion of the case we will ask the Court to dissolve the injunction, and dismiss the case.

Thank you, your Honor.

THE COURT: All right, do you want to call your first witness then?

MR. HARTMAN: Your Honor, if I could say just a few words.

[21] THE COURT: Oh, of course. I saw you sitting there and I guess I had just forgotten about you. All right, you may go ahead.

MR. HARTMAN: Your Honor, my name is Jon Hartman, and my associate at the counsel table is Tom McLachlen.

THE COURT: All right, Tom is admitted for the purposes of this case.

MR. HARTMAN: Your Honor, the Comptroller of the Currency has intervened in this case in order to help establish the fact that this is a lawful merger, and that it does not in any way have anti-competitive effects, and furthermore, that even assuming the anti-competitive effects alleged by the plaintiff, the convenience and needs benefits the community of Spokane will outweigh clearly any such assumed anti-competitive effects. Now our role in this litigation is focused primarily on the convenience and needs end of it, although we are involved in the anti-competitive side, the Section 7 side of the case, if you will. In passing on this acquisition, an application of course must be filed with the Comptroller's office, and then he considers the application, and if he feels its necessary, a hearing is held. Now a hearing was held in this case, and I think that in order to have the complete [22] administrative record before this Court, I have brought a transcript of that hearing, and I would like to make that available to the Court at this time.

THE COURT: How long is that, Mr. Hartman?

MR. HARTMAN: Would you hold that up, Mr. McLachlen.

THE COURT: All right, I will read that one. Normally they are several times that long, but I will read that.

MR. HARTMAN: Should we mark that as an exhibit?

THE COURT: Yes, certainly.

(Intervenor's Exhibit No. 500 was marked for identification.)

MR. TORRE: Your Honor, we would object to its introduction, because we think it is immaterial to the decision which the Court has to make, and would have no probative value at all, because this is a de novo review.

THE COURT: I agree that as far as evidentiary value is concerned, you probably are correct. It is a de novo review. However, just to give me some inkling as to what is going to come in this case, I would kind of like to read it, it will give me an opportunity to go over it a couple of times, you see. You have [23] been over it a lot of times, and I haven't been over it at all. It will just help my memory. For illustrative purposes, if you want to use that term.

(Intervenor's Exhibit No. 500 for identification was received in evidence.)

MR. HARTMAN: Now, in considering the convenience and needs, the Comptroller has taken into account the economic memoranda filed by the defendant in which the bank will list the services and what kind of activities the National Bank of Commerce will be able to provide the City of Spokane, and there is quite a lengthy list of these, and I won't go into each one of them, but what my office tries to do then is to go to the people of Spokane, down to where banking really hits the community, if you will, and find what the needs of the community may be.

For example, international banking service, and I will have some witnesses who will come to this court and tell this Court about their needs for international banking services, where they go to satisfy them now, but they would like to have available for them so that they may have better banking available for them.

Now other areas illustrative are student loans, [24] for example. There is a need for student loans in the City of Spokane. There is Gonzaga University there, and there are other schools around the outskirts.

THE COURT: Yes, there is Whitworth, there is Eastern Washington State College, and Washington State University, and that is a real good school. That is where I went to school.

MR. HARTMAN: We will show that need, and we will show that the National Bank of Commerce if it could enter Spokane through this merger, would benefit the community, and these banking services will be provided.

Then there are other areas of municipal financing, ad-

vice, counseling, all of these available to the municipality in the Spokane area, things like Small Business Administration loans, and the Regional Director of the Small Business Administration has agreed to be a witness for the Comptroller in this, and he will tell about what effect this will have on his programs.

We look to the convenience and needs, because we believe that the statute, the Bank Merger Act of 1966, strongly suggests that the Court consider convenience and needs in any event. In other words, this is an element in this case, and we urge the Court [25] always to assume arguendo that the anti-competitive effects alleged by the plaintiff, to assume their existence, and then to weigh the convenience and needs which have been established against them. We think then that your Honor will find that they clearly outweigh these anti-competitive effects.

THE COURT: Incidentally, Counsel, are you the one who has subpoenaed a witness by the name of Jerry Camp?

MR. HARTMAN: That is I, your Honor.

THE COURT: Well, Mr. Camp was the freshman in my room at college, and I just wanted to let you know that I didn't think the oath would do any good. However, we will let him testify anyhow.

MR. TORRE: Your Honor, at this time we would like to introduce our statistical exhibits. Mr. Verveer will make that presentation.

THE COURT: All right. You have them all marked, I take it?

Are there any objections to those that he has marked, and is offering here, Mr. Moen?

MR. MOEN: Yes, there is going to be an objection to it. We think that many of these documents are strictly hearsay, and that they should not be admitted. It is pretty hard to pass upon them in toto. [26] There is quite a stack of them and these exhibits didn't come to our attention until last Thursday. There are some of them that are no doubt admissible, but there are many of them which we claim are not admissible, and we intend to object to them.

MR. HARTMAN: May the record show that the intervenor has the same objection, your Honor.

THE COURT: All right. Then you will offer these, Counsel, and as we go along will you then let me know which ones are objectionable; we can't of course run down the whole list right now and have me rule on the admissibility, can we?

Mr. Torre, how do you think we should proceed in that?

MR. TORRE: I feel we should get the documents out of the way, because I think it would facilitate the presentation of evidence in the rest of the trial.

THE COURT: You don't have any particular witnesses who are going to testify, at which time you will offer this document, that document, and so forth?

MR. TORRE: Yes, we do. The statistical exhibits primarily related to our economic experts, who will testify, Mr. Smith and Mr. Marston. The other documents that we are introducing are documents which [27] have all been produced from the defendants' records through discovery pursuant to Rule 34, and subpoenaed attached to depositions. So therefore the documents are all part of defendants' records who have had them before we had them actually, so that they are not new to them, and they were on notice that we were going to introduce them.

THE COURT: Well, I don't think that is the basis of the objection. I understand Mr. Moen says he thinks that there are a lot of these proposed exhibits that are not material to the issues here, some hearsay and so forth, and therefore they are objectionable. Now how are we going to handle that? I don't know whether they are or whether they aren't.

MR. TORRE: If we could have Mr. Verveer make the introduction, I think you will see that most of these objections could probably be resolved at this time.

THE COURT: All right, we will see. This is a new way of handling it, because it seems to me I won't have enough knowledge about a proposed exhibit to know how to rule.

MR. TORRE: It is not an unusual procedure, your Honor, it is a very common one. This was done by Judge Boldt in a case in which I was involved in Idaho,—

[28] THE COURT: You mean that bank merger case in Boise?

MR. TORRE: Yes. It was done by Judge Lewis in Virginia recently, by Judge Zampano in Connecticut, and others.

MR. MOEN: May I suggest, your Honor, that Mr. Verveer be given a chance to offer his exhibits, and then I would like for Mr. Johnston to be able to respond to them.

THE COURT: All right, go ahead and let's see what happens.

MR. VERVEER: Your Honor, the government offers Government Exhibit A for identification, and subnumbers A-1 through A-71 as Government's Exhibit A into evidence.

Government offers Government's Exhibit B for identification, subnumber B-1 through B-4, as Government's Exhibit B.

The government offers Government's Exhibit C for identification as Government's Exhibit C.

The government offers Government's Exhibit D for identification, subnumbered D-1 through D-6, as Government's Exhibit D.

The government offers Government's Exhibit E for identification, subnumbered E-1 through E-4, as [29] Government's Exhibit E.

The government offers Government Exhibit F for identification, subnumbered F-1 through F-31, as Government's Exhibit F.

The government offers Government Exhibit G for identification, subnumbered G-1 through G-11(b) as Government's Exhibit G.

The government offers Government's Exhibit H for identification, subnumbered H-1 through H-15, as Government's Exhibit H.

The government offers Government's Exhibit I, for identification, subnumbered I-1(a) through I-11(f), as Government's Exhibit I.

The government offers Government's Exhibit J for identification, subnumbered J-1 through J-54, as Government's Exhibit J.

The government offers Government's Exhibit K for

identification, subnumbered K-1 through K-94, as Government's Exhibit K.

The government offers Government's Exhibit L for identification, subnumbered L-1 and L-2, as Government's Exhibit L.

The government offers Government's Exhibit M for identification, subnumbered M-1 and M-2, as Government's Exhibit M.

[30] The government offers Government's Exhibit N for identification as Government's Exhibit N.

The government offers Government's Exhibit O for identification, subnumbered O-1 through O-23, as Government's Exhibit O.

The government also would like to offer into evidence at this time in their entirety, the depositions of Mr. Maxwell Carlson, former president of the National Bank of Commerce, Mr. Andrew Price, Jr., Chairman of the Board of Marine Bancorporation, Mr. T. Robert Faragher, president of the National Bank of Commerce, Mr. Robert F. Buck, senior vice-president of the National Bank of Commerce, Mr. Ralph J. Stowell, senior vice-president of the National Bank of Commerce, retired, Mr. Frank A. Abersfeller, he is the assistant vice-president of the National Bank of Commerce, in charge of correspondence accounts, Mr. Dean W. Loney, chairman of the Board, Columbia Center National Bank, and Mr. Philip H. Stanton, president of the Washington Trust Bank.

THE COURT: Now, you say Mr. Loney was the chairman of the Board of the Columbia Center Bank, that is in the Tri-City area?

MR. VERVEER: Yes.

THE COURT: And Mr. Stanton is president of [31] the Washington Trust Bank in Spokane?

MR. VERVEER: Yes.

THE COURT: All right, go ahead.

MR. VERVEER: At a later time in our case, as Mr. Torre indicated, we will introduce the deposition of the late W. W. Witherspoon, chairman of the Board of Washington Bank Shares.

Plaintiff also will introduce certain of defendants' and intervenor's answers to interrogatories at a later time.

THE COURT: All right. Now if you are through,

Counsel, I notice that opposing counsel wants to make some objections.

MR. MOEN: Your Honor, I would like Mr. Johnston to handle this.

THE COURT: All right, Mr. Johnston.

[32] MR. JOHNSTON: If the Court please, these are the exhibits that counsel has referred to, this stack here. This document that I hold in my hand, which consists of,—these pages are not numbered, but it is simply a list of the exhibits. There are several hundred of these exhibits, and a number of them are multipaged.

Now, I would like to discuss these exhibits in two categories, because the exhibits that have been denominated in the A group, and in the O group,—

THE COURT: The A group?

MR. JOHNSTON: The A group and the O group. Now plaintiff has numbered these in sequence, and he has broken them out into categories, and the categories will go A-1, 2, 3, 4, and then when it gets into a new category it is D-1 and so on. The A group and the O group, which are contained in this folder here, are the statistical exhibits that have been prepared by or on behalf of plaintiff, and presumably for the purpose of use in testimony by their experts.

Now, our experts have reviewed these exhibits, and while we find several of them to be, to contain very substantial inaccuracies, the bulk of them we feel are basically accurate, and the way we propose to deal with this group—

[33] THE COURT: This is the A and the O group?

MR. JOHNSTON: The A group and the O group. The way we propose to handle them is simply to reserve any inaccuracies that develop from the testimony for correction, because this type of exhibit lends itself to that procedure and efficiency in handling it. In other words, we don't have objection to their admission, to the extent that they are to be used in the testimony of the experts, and that the experts will provide—

THE COURT: Well, I understand your position.

MR. JOHNSTON: And if inaccuracies develop—

THE COURT: Then you can certainly ask about it on cross.

MR. JOHNSTON: Now as I say, there are several of these exhibits which we feel have very very substantial inaccuracies, and we will establish that and reserve.

THE COURT: Well, when you admit something of that character, of course you don't say I admit it and I believe it. You just admit it.

MR. JOHNSTON: Yes, that is correct.

MR. VERVEER: Your Honor, if the defendants will inform us of the inaccuracies—

[34] THE COURT: Well, he will inform you, I take it, at the time he attempts to show by cross-examination that the testimony of your witnesses is not just exactly in accordance with the facts. Isn't that what you propose to do?

MR. JOHNSTON: Yes.

THE COURT: All right, let's go to the next matter.

MR. JOHNSTON: Now, the entire remaining stack of exhibits here are in an entirely different category, your Honor. I would estimate, and that is all I can do at this time, because of the time that we have had to review these has been very short,—I would estimate that a very large part of these exhibits are photocopies of papers which were in the records of the National Bank of Commerce. Now I want to start out by saying that we do not question that these are accurate reproductions of papers which were in the files of the bank.

In addition to that there are various correspondence, some of which we are not sure of where they came from. There are annual reports, there are memoranda, and reports of the Comptroller and other banking authorities with reference to other mergers that have no direct relationship with this merger, there [35] are all sorts of miscellaneous documents that the plaintiff has picked up in one place or another, in addition to the copies of documents which they have taken from the files of the National Bank of Commerce.

Now, a little while ago I attempted to make a quick index of what these appear to consist of, and I would just like to comment briefly for illustrative purposes, to indicate what is basically in these things. Now Exhibit B consists of documents which purport to be credit memo-

randa, although it is actually with reference to the Security Bank of Lynnwood, Washington.

THE COURT: The Security Bank of Lynnwood?

MR. JOHNSTON: Yes, Lynnwood, Washington.

THE COURT: Well, Lynnwood is north of Seattle, isn't it?

MR. JOHNSTON: Yes, that is right. Actually this is on a printed form, as your Honor can see, and the actual content of these things I think is more in keeping with what appears on the heading of a number of the other exhibits, which are written on a page which is entitled Intercompany Communications, or words to that effect, I think that is the term that is used.

Now, in these documents, and as I say, I simply dropped my eyes on this particular document and start reading at a place where my eye happens to [36] light.

"He told me that Bob Young, president of Everett Trust and Saving Bank had recently told him that he was coming your way."

I think that illustrates the character of the hearsay on hearsay.

THE COURT: That would mean that—the inference being that somebody was going to change accounts, or deal with somebody else, or something like that, isn't that what that refers to?

MR. JOHNSTON: Well, of course we haven't really had a chance to examine these to the point where we can determine exactly what the inference is.

THE COURT: Read that over again, will you please?

MR. JOHNSTON: This is a part of the page where my eye happened to fall right on this particular thing. It reads as follows: "He told me that Bob Young, president of Everett Trust and Savings Bank had recently told him that he was coming your way, to which his response was, come ahead, so long as we can compete and be friends, like with N B C in Edmonds."

Now, your Honor, this not only has nothing to do with the case, this type of thing, it is entirely inadmissible evidence. I think the Court will recognize, [37] and I have authority to support it, that there is no exception to the hearsay rule in the guise of business documents

that permits hearsay evidence to which the witness himself couldn't testify to over objection.

THE COURT: Well, aside from that hearsay aspect that you have discussed, this is for all counsel, if they all come in like this, all of these exhibits, I suppose if they are in the case, then you expect me to read them, is that true?

MR. TORRE: Yes, your Honor, that is one of the problems in an antitrust case.

THE COURT: Well, you expect me to read them. Assume that I would, assume that I would read everything that you have introduced. How do I know in what area they are material to the issues in this case, unless I hear somebody testify about it, and it is pointed out to me where it is material? In other words, I will have to grope around and say, what does this mean, and where does it have a bearing on the lawsuit. Now that is something that really bothers me. I wouldn't mind reading them, I am all through with the book entitled Bury My Heart at Wounded Knee, so I have time to read this, but I just don't know what I would get out of it, unless you would show me what materiality it has during [38] the course of the trial, counsel.

MR. VERVEER: Your Honor, there are at least two possibilities that the government can offer. First, in the instance of some of these documents, our witnesses will testify to certain portions of the documents and indicate why they are relevant to this lawsuit.

THE COURT: Well, that is the normal way. And then we can discuss the relevancy at that time. But here I am supposed to read all through this, and then try to make a determination as to where it fits. I am real smart, but I don't think I am that smart. I noticed that somebody even smiled when I said I was real smart. So you see, there is even some controversy about that.

MR. VERVEER: The second possibility we would offer, your Honor, that in proposed findings of fact at the end of this litigation, that there can be some indication of precisely how the government feels—

THE COURT: Well, then I will have had to have read them in order to determine whether the findings of fact accurately reflect what I think about those docu-

ments, and where they belong in the scheme of things in this case, is that right?

MR. VERVEER: Yes, your Honor, that is right. [39] And as I indicated, your Honor, some of these documents, we feel quite confident, will speak for themselves as to very important issues in this case.

MR. JOHNSTON: Your Honor, I may suggest one view of this, and that is this, that the documents that are just presented here as copies of papers—

THE COURT: Well, there is a group of depositions, for example here—

MR. JOHNSTON: Some of these documents, I think, have been touched upon in the depositions, but here again there are a large portion of them, of very few of them I might say, in comparison with this pile, but to offer these in this form, in this circuit, our circuit has said that even if these documents were regarded as a business record, which I think the authorities indicate they are, there still has to be a proper foundation for their offering. I think the Court has been—

THE COURT: You are talking about materiality, is that right?

MR. JOHNSTON: Well, not only materiality, but the fact that they are inadmissible for many types of objections, because as I say, a document of this kind doesn't justify evidence which would be objectionable as hearsay, or upon other bases, if the witness who [40] wrote the document were here and testified on the stand. In the very short time that we have had to review them, we think the bulk of the material in these documents would fall in that category. That the material in these documents, if the witness were here,—

THE COURT: But he couldn't testify to it because it was not material, or irrelevant?

MR. JOHNSTON: Because it was hearsay, irrelevant, and so forth.

THE COURT: All right, I understand.

MR. JOHNSTON: And on that basis, we strongly recommend, as to each of these documents, if and when plaintiff feels they are appropriate, they offer them, and then we have a chance to discuss them and talk about them, because really this paragraph that I read your

Honor is a very common type of thing that runs all through this.

Actually there are a lot of papers in here which just report that so and so said to me, told me that somebody else told him, and so on. Now for a document to be admissible, even as a business record, if there is material of that character in it, the objecting party has the right to have it expunged before the document is admitted. And, the bulk of it is in that category.

THE COURT: Well, suppose you're a judge, [41] and had the duty to hear this case. How much weight would you attach to thirdhand hearsay? Maybe it is just academic, let it all in and then we will give it the weight to which it is entitled, which is none.

MR. JOHNSTON: Well, there is one objection to that, your Honor, which I would like you to consider, and that is we are sure as a matter of fact these documents are here, and we would be happy to have your Honor review the whole bunch of them, but we don't want them to be a part of the record when this case is over, if they are not properly admissible. As far as your Honor examining, passing upon them,—

THE COURT: In other words, you trust me more than you do the appellate court, is that the idea? They might give more weight to it than I would. I understand your position, Mr. Johnston. What you want to do is make a record that is, according to the terms of the trade, a clean record, is that the idea?

MR. JOHNSTON: Yes, your Honor, that is the idea.

THE COURT: And you don't think you can do it without the opportunity to question the individual exhibit if you feel it is objectionable?

MR. JOHNSTON: Yes, due to the character of it. If it were simply a matter of just a [42] few little problems with them, I am sure we could deal with them in the same way we suggested as to the others.

THE COURT: All right, I understand your position. Now, did you want to say something further, Mr. Hartman?

[43] MR. HARTMAN: Your Honor, just for purposes of making it clear on the record, I want to record my objections to the documents; as to Exhibit A, we

haven't had time to transpose the numbers we had on the documents to those numbers which the plaintiff has put on them, but I will be happy to serve all parties with a written list of the documents to which I object. My objection goes to relevancy. Most of these documents relate to the State of Washington, as a whole, or certain counties,—

THE COURT: They are too general, is that the idea?

MR. HARTMAN: That is right, and they don't even relate to Spokane, and that is what we are talking about in this case. That is to Exhibit A.

Now as to Exhibit B, which is that large pile of papers here, and which contains hearsay and double hearsay, and the triple hearsay, and such documents as that, I would object to all of those in general until there is a specific document or a specific part of a document, for example,—

THE COURT: You know, I just came up with an idea, Mr. Hartman, that just may help me solve this problem. I will just reserve ruling on these until I find out whether or not they are admissible, and I will [44] tell you how I will find out whether or not they are admissible. The ones that are presented during the course of testimony of course I will know about, and those that are not presented during the course of the testimony, maybe by that time I will have enough knowledge of what the case is all about to determine whether or not it is relevant. So I will just reserve ruling on them, and that will take care of that situation.

MR. HARTMAN: That sounds excellent, your Honor.

Now, may I address myself to the depositions which the plaintiff has offered?

THE COURT: Well, I will reserve all that, too.

MR. HARTMAN: I would like to point out that all objections were reserved on those until the time of trial, and this morning is the first notice that we had that the depositions were going to be offered. So we do have specific objections to those.

MR. TORRE: Objection, your Honor. A month ago I served a pre-trial statement where I indicated that these were going to be offered, so I think that is not true.

THE COURT: Well, what does the statement say [45] right at the start, where we always say that objections are reserved?

MR. MOEN: I think the pre-trial statement says that the deposition of Mr. Witherspoon will be treated as such, but I don't think there is any mention of these other seven or eight depositions.

THE COURT: Well, let me see what it says here.

MR. HARTMAN: I don't think there is such a normal stipulation in those depositions, because we simply said it is in the statute that the objections are reserved so there is no need putting it in there. So all I ask now is a chance to make those objections.

THE COURT: All right, I will reserve on these, too.

MR. HARTMAN: Thank you, your Honor.

MR. JOHNSTON: Your Honor, I would simply like to join Mr. Hartman's objections.

THE COURT: All right, I will just reserve on them. Now, you will have to remind me that I have not ruled at the conclusion of this case on a lot of documents that will be offered, because I take it that everything will not be presented to a witness at the time of his testimony. So just remind me, will you, please.

[46] MR. VERVEER: Your Honor, recognizing that you found the solution that you think might be appropriate, I would like to urge upon you the possibility that your procedure might lengthen the trial unnecessarily.

THE COURT: Well, any procedure that will avoid that, I will follow it, even to the point of making error. But, no, I don't think so. Of course both you and I can agree that neither of us want to make a career of this case, so we eventually want to terminate it. But on the other hand, I think I can handle it by reserving my ruling, and then we will see what happens.

MR. VERVEER: Your Honor, if I could just make a very brief observation to Mr. Johnston's allusions to the hearsay problems in our exhibits. We would contend that the business records rule, the public records rule, and the rule governing admissions of parties will in some examination take care of any problems.

THE COURT: All right. Now, do you have a witness you want to call?

MR. TORRE: Yes, we have a witness ready.

Your Honor, we would call Dr. Robert Edward Smith as our first witness. We have prepared a resume [47] of his qualifications, his professional experience, which has been given to all of the parties concerned.

THE COURT: All right.

MR. TORRE: And we ask that it be entered into the record at this time.

(Resume reads as follows:)

"ROBERT EDWARD SMITH
Professor of Economics
University of Oregon
Eugene, Oregon.

"Expertise: Industrial Organization and Labor Economics.

"Education: B.A., University of Southern California, Ph.D., University of California.

"Honors: National Competition Scholarship, University of Southern California; 1939; B.A., Magna Cum Laude, 1943; Phi Beta Kappa—Junior Year, Phi Beta Sigma, Phi Kappa Phi; Qualified as an Arbitrator by the Federal Medication and Conciliation Service.

"Professional Affiliations: American Economic Association, Western Economic Association.

"Professional Experience: 1943-49: Teaching Assistant, U.C.L.A.

"1949-51; 1954-55; 1956-62: Assistant Professor of Economics, University of Utah.

[48] "1955-56: Research Associate, Giannini Foundation of Agricultural Economics, University of California, Berkeley.

"1962-63: Visiting Lecturer, University of Oregon.

"1966-67: Economic Adviser to Commissioner Mary Gardiner Jones, United States Federal Trade Commission.

"1967-68; 1969-70: Associate Professor of Economics, University of Oregon.

"1968-69: Special Assistant to the Executive Director of President Johnson's Cabinet Committee on Price Stability.

"2/69-6/69: Special Assistant to Dr. Willard Mueller, Director, Bureau of Economics, United States Federal Trade Commission.

"7/69-9/69: Manpower and Social Affairs Directorate, Organization of Economic Cooperation and Development.

"1970-1971: Chief, Restrictive Business Practices Section, United Nations Conference on Trade and Development.

"1972: Professor of Economics, University of Oregon; Courses: Industrial Organization & Public Policy; Economics of Regulated Industries; Introduction [49] to Economic Analysis; Multi-National Corporations; The Unemployment—Inflation Dilemma; Manpower Economics.

"Publications: The Union Shop and a Democratically Structured Economy, 1958;

" 'The Cartelization of American Agriculture: A Case Study,' Proceedings of the Western Economic Association, 1950.

" 'Compulsory Arbitration: A Broad View,' Current History, August 1965.

" 'Job Market and Manpower Policy,' Study Paper No. 1 in Studies by the Staff of the Cabinet Committee on Price Stability, January, 1969;

" 'The Unemployment and Inflation Problem,' Study Paper No. 4 in Studies by the Staff of the Cabinet Committee on Price Stability.

" 'Conglomerate Power—Sources and Consequence,' with Dr. W. Mueller, Chapter VI, Economic Report on Conglomerate Mergers, Staff Report to the Federal Trade Commission, Washington, D.C., 1969.

" 'A Survey of the Phillips Curve Literature and its Significance for Manpower Policy,' March 1970.

"Testimony & Presentations: Expert testimony, Subcommittee to the Senate Commerce Committee, February, 1972.

[50] "Presentation—'Teaching Principles by Closed

Circuit T.V.,' Western Economic Association Convention, San Diego, California, August, 1965.

"Presentation—'Guideposts—A Micro Tool in a Macro World' Western Economic Association Convention, Boulder, Colorado, August, 1967.

"Presentation—'Toward A Barrier Theory of Markets,' Western Economic Association Convention, Corvalis, Oregon, August, 1968."

THE COURT: Is there any objection to the fact that he is qualified?

MR. MOEN: No objection, your Honor.

MR. HARTMAN: No objection, your Honor.

ROBERT EDWARD SMITH,

called as a witness on behalf of Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TORRE:

Q Will you state your name, please?

A Robert Edward Smith.

Q And what is your position?

A I am a Professor of Economics with the Department of Economics at the University of Oregon.

[51] Q What is your area of expertise in economics?

A I would say primarily what we call industrial organization and public policy.

Q And could you define those broadly for us?

A Industrial organization and public policy, in those we are primarily concerned with preserving competition as a social control over the decisions of businessmen. This includes an analysis of antitrust laws and probably the basic concern that we have is the relationship between structure, conduct and performance.

Q I notice that you received your Bachelor's degree at the University of Southern California?

A That is right.

Q Were any honors attendant upon your graduation?

A I graduated Magna Cum Laude, and I earned a Phi Beta Kappa key in my junior year.

Q And you received your doctorate degree from the University of California?

A At Los Angeles, U.C.L.A.

Q I notice between the years 1966 and 1967 that you were economic adviser to Commissioner Mary Gardiner Jones, United States Federal Trade Commission. Could you briefly describe what your duties were in that position?

A I helped her to prepare opinions, when they were submitted to her office for decision, by the Federal Trade [52] Commission. In addition to that, decisions had to be made whether actions would be brought, what action would be taken, in particular types of cases, and during the period of time I was there was the period of time when product extension acquisitions, and the geographic extension acquisition were very much the vogue. So I have had quite a bit of experience both in terms of writing decisions and preparing other documentation in the case of acquisitions involving potential competition.

In addition to that there were the other sort of things that would come to the Commissioner's desk.

Q I notice between 1968 and 1969 you were Special Assistant to the Executive Director of President Johnson's Cabinet Committee on Price Stability. What did that position involve?

A The function of the Cabinet Committee was to find some solution for the unemployment-inflation dilemma which had been plaguing us since that time. In particular I was responsible for preparing two of the study reports which were published by the Cabinet Committee in January of 1969.

Q Did those reports involve any analysis of competition, and if so, would you relate thereto?

A There were four reports, the two for which I had primary [53] responsibility did not. The second study paper did have quite a bit to do with potential competition and I was principally involved with that.

Q I notice that you returned to the Federal Trade Commission in 1969 for a period of time, and you worked for a Dr. Willard Mueller. Who is Dr. Willard Mueller?

A At that time he was director of the Bureau of Economics, the United States Federal Trade Commission.

I functioned as his special assistant.

Q And what were your duties as his special assistant?

A The primary one was to prepare a portion of the FTC report on the conglomerate merger movement. My particular responsibility was the chapter dealing with the nature and significance of conglomerate power, an important aspect of which was potential competition, as well as reciprocity. There were other things that were done, but that, I imagine, was the key thing.

Q For a short period of time in 1969 you were with the Manpower & Social Affairs Directorate, Organization of Economic Cooperation and Development. What is the organization mentioned and what were your duties there?

A The O.E.C.D., the Organization of Economic Cooperation and Development, it is an organization of the advanced development countries of the world, there are some 22 members. These are the capitalistic countries, and [54] this is where they need to sort of help them find solutions to economic problems at the international level, and my primary responsibility there was to prepare a paper on unemployment-inflation.

Q Between 1970 and 1971 you were the Chief of the Restrictive Business Practices Section, United Nations Conference on Trade and Development. Could you describe what that job involved?

A The United Nations Conference on Trade and Development is the organization which represents the economic interests of developing countries. Their primary concern, at least to the extent that I was associated with it, was the impact upon their ability to export, stemming from restrictive business practices in international trade, and I was involved in the establishing of that section, that particular section, and the first publication on the topic of International Restrictive Business Practices at the United Nations Conference on Trade and Development.

Q. You mentioned that your work with the Federal Trade Commission involved the analysis of competitive effects, and theories of acquisition, involving those of

potential competition. In what industries have you analyzed that?

A The major case we had, for which I was responsible, was [55] in the milk industry, but at that time we had a whole array of industries before us, including the baking industry, the dairy industry, the retail grocery industry, there was even one involving fishing reels, and fishing equipment, as I recall. There were some involving chemical production, it was quite an array of industries.

Q What specific preparation you do for preparing yourself to testify in this case and in analyzing the competitive effect of the proposed—

THE COURT: Just a moment, Counsel, the Reporter is changing his paper in the machine.

All right, now you may go ahead.

MR. MOEN: Your Honor, if he is through with his qualifications, I would like to ask a few questions on voir dire.

MR. TORRE: I will be at a breaking point in just a moment, your Honor.

THE COURT: All right, go ahead.

Q. (By Mr. Torre) What preparation, specific preparation did you do in connection with preparing yourself to testify in this case, and in analyzing the proposed merger of the National Bank of Commerce with the Washington Trust Bank?

A. I read much of the literature that I considered to be relevant to the issues involved in this case, involving [56] commercial banking, I took a look at the briefs from both parties, and the opinions in the Greeley, the Idaho and the Virginia cases, I had access to the depositions, I had access to other materials that you submitted to me, the Antitrust Division for the most part prepared the statistical tables, I was asked to comment on them, and I commented upon them, including inclusion and exclusions, in some cases I asked for specific materials to be supplied. We had occasion to meet to discuss the case in Eugene, Oregon, and in two occasions in Washington, D. C.

Q. Did you have an opportunity to visit the Spokane metropolitan area in preparation for this case?

A. Yes, I made a brief trip to the Spokane—the City of Spokane, and while there I had occasion to talk to two prominent bankers.

Q And what was the significance of your visit to Spokane, to your competitive analysis of the proposed merger?

A I would say the most significant development was that it gave me an insight and substantiated what in my opinion became an important element in the case. This had primarily to do with the competition, the nature of the competition in Spokane.

MR. TORRE: I think this is an appropriate time for voir dire, your Honor.

[57] THE COURT: All right, Mr. Moen, do you want to proceed now or do you want to do this on cross-examination?

MR. MOEN: I would just like to ask him a few questions at this time, your Honor.

THE COURT: All right, go ahead.

VOIR DIRE EXAMINATION

BY MR. MOEN:

Q Mr. Smith, how long have you been a professor of economics at the University of Oregon?

A I came to the University of Oregon in 1962 as a lecturer. I was asked to stay on and became an associate professor in 1963.

Q And when did you become a professor?

A I became a professor last June.

Q When did you receive your doctorate?

A In 1963.

Q And what was the subject of your dissertation?

A The subject of my dissertation was California Grape & Wine Industry, and industry study. It was an industry study.

Q You listed your two professional affiliations. What are the qualifications for joining those?

A. Nothing in particular.

[58] Q There is a gap here from 1951 to 1954. What did you do during that period?

A I was in business in Southern California, I was a partner with my father in the wash rack business, we had automatic car washers. I had been in that business with my father intermittently from about 1940. In addition to that, I attended law school.

Q Now on page 2 of your resume you listed a number of titles. Are those courses that you are teaching at the University of Oregon?

A I believe they are. I don't have a copy of it here. Could you just read the first one to me, and I could tell you.

Q Well, it says "Economics, University of Oregon; Industrial Organization & Public Policy."

A Yes, these are the courses that I will be teaching this year.

Q Now, do any of those courses have anything to do with banking?

A This particular quarter I am teaching a course in industrial organization and public policy.

Q Does that include any work in the banking industry?

A Yes, it will, because I am also teaching a course in the economics of great wealth. This particular course is going to be a combination of the economics on [59] regulated industries and industrial organizations and the antitrust aspect of it. The reason why I am putting them together is because I will not be there during spring quarter.

Q How many hours courses?

A It is a three-hour course.

Q And how many of those are devoted to banking?

A I would say three lecture periods will be devoted.

Q Three lecture periods in one quarter?

A That is right.

Q In your publication, are all those titled related to economics?

A They are not all related to economics, labor economics.

Q Are any of them related to banking?

A None are related to banking.

Q Have you ever worked for a bank?

A I have never worked for a bank.

MR. MOEN: I am not going to object to the witness' qualifications to give opinion testimony, but I thought it might be well at this time to develop his familiarity with the banking industry.

THE COURT: All right.

All right, Mr. Torre, do you want to continue with your examination of Dr. Smith? You will note that I said Dr. Smith.

[60] THE WITNESS: I really prefer Mr. Smith, your Honor.

THE COURT: Well, I like to be called Bill instead of Judge, too, but of course we can't do it here. Therefore, I will call you Doctor.

I think, gentlemen, this would be an appropriate time for our afternoon recess, so we will recess for about ten minutes.

(Recess.)

[61] THE COURT: This would be an appropriate time to take a brief recess.

(Recess)

(Court convened at 3:04 p.m.)

FURTHER DIRECT EXAMINATION

BY MR. TORRE:

Q Dr. Smith, what type of acquisitions or mergers are there?

A There are four types of acquisitions. There are horizontal, vertical, extension market acquisitions and conglomerate acquisitions.

A horizontal acquisition is one in which the firms occupy the same relevant product and the same relevant geographic market.

A vertical acquisition involves acquisitions between buyers and sellers. In other words, it is an input and output relationship. Market extension acquisitions are of two types. Product market extension acquisition and a geographic market extension acquisition. A product market extension acquisition involves firms that are in

the same relevant geographic market but in different relevant product markets.

The geographic market extension acquisition involves firms that are in the same relevant [62] product market but in a different geographic market and the conglomerate acquisition involves firms that are neither in the same product nor geographic market.

Q In determining the competitive effects of the geographic market extension merger, what are the principal factors to consider?

A I think I probably should have added that the acquisition of W T B by the N B of C was the geographic market extension acquisition.

Q In determining—

A Would you state your question again, please?

Q Yes, what in determining the competitive effects of market extension mergers such as the National Bank of Commerce and the Washington Trust Bank merger, what are the relevant factors or principal factors to consider?

A The major things you have to consider are twofold. First of all, you have to consider the level of the concentration in the relevant market and secondly you have to consider the nature and significance to the potential competition relevant to that market. These are two major factors that have to be considered.

Q In analyzing a geographic extension merger or the effect of an acquisition involving potential competition or competitors, what is the appropriate time dimension to [63] use?

A Given the highly concentrated nature with concentration of the commercial banking in the relevant market, and we shall establish this, the primary concern of this case is to preserve and maintain the procompetitive impact of potential competition and—

THE COURT: (Interposing) Well, I don't think that is quite responsive to your question—I believe your question was what was the time to be considered—didn't you ask him that, as to the appropriate time?

MR. TORRE: Right, the appropriate time frame or dimension in which analysis—

THE WITNESS: (Interposing) What I want to do, your Honor, was to then say that the evolution of potential competition as a structural control in the market is a very time-consuming process. I would say for example that a reasonable period of time or period of evolution for potential competition would extend to ten years or so. It is a very patient long-headed policy. This may seem to be somewhat unreasonable but I would suggest that it is reasonable for two reasons. First, what is being determined here is the long-term structure of commercial banking in the Spokane metropolitan area and the structural change that is being proposed here is irreversible. For these reasons I think then that it would be a rather long horizon that would seem to be warranted.

Q In your opinion, Dr. Smith, is commercial banking in the Spokane metropolitan area concentrated?

A Yes, I would say that it is concentrated.

Q How did you determine that it was concentrated?

A The determination of concentration is a calculation that involves really three steps. First of all you have to determine what the relevant geographic market is and the parties have stipulated here that a relevant geographic market is the Spokane market area.

The second thing that has to be determined is the relevant product market. We submit that the relevant market product is commercial banking. For this reason we have chosen, as a measure for the participation of firms in this relevant product market, I.P.C. demand deposits—individual, partnership and corporate demand deposits.

Commercial banking offers a unique cluster of services as in its advertising it is sometimes called—full service banking. The unique characteristics of that full service banking is the offering of services of demand deposits for checking purposes and commercial banks are the only ones that offer that particular function. For this reason, for this reason [65] then I.P.C. demand deposits—these were chosen rather than others, others could have been chosen as a measure of participation such as total demand deposits, loans, assets, time deposits and

this sort of thing. We chose for the Spokane metropolitan area however I.P.C. demand deposits.

Q Would the demand deposits also be,—the total bank deposit also be relevant to the commercial bank relevant product?

A Well, when you take a look at the resulting concentration figures they tend to make very very little difference when you measure participation if you took assets, if you took loans or whether you took total demand deposits or I.P.C. demand deposits.

Q Does the fact that commercial banks are the only ones, only institutions which accept demand deposits make a particular difference in the economy?

A The way in which it makes it particularly significant is that this is a process through which our monetary policy is implemented and if the banking system, the commercial banking system is not properly responsive then there conceivably could be some problem with monetary policy and it would be one of the two basic macropolicies upon which we rely to assure full employment and try to minimize the impact of inflation.

[66] Q You mentioned that there were three steps in determining the competitive impact of a market extension acquisition. What is the third step involved?

A The third step involved involves selecting the number of firms, or in this case, banks, which will give you your concentration ratio. You obviously cannot select all firms in the relevant market, your concentration ratio would be 100%, so then there is the element of the arbitrary in selecting whatever number you use. The U. S. Census normally would select four, and one of the reasons for it is that it has to do with the requirement of confidentiality. And we chose three, the top three, to measure concentration.

The reason for that is twofold. First, and more significant, was the fact that there is a significant discontinuity in the concentration ratio between the third and the fourth, that is between the third and fourth sized commercial banks going from something above 18% to something below 3% so there is significant discontinuity between third and fourth size banks.

The second reason is that W. T. B. was the third bank.

Q You have before you this Exhibit No., it is marked for identification No. A, and I would direct your attention to Exhibit No. A-56. What is the significance of this [67] table?

A I would direct your attention to the column on the extreme right, the extreme right where it says "Percentage of Total". This gives the resulting concentration ratio following this procedure which we just observed. This involves noticing in the title—I.P.C.—demand deposits in the Spokane metropolitan area, and this gives you the geographic market, relevant product category.

In 1972 the concentration was, considering the National Bank of Washington and the First National Bank of Spokane to be in effect one bank, because they are both subsidiaries of the Washington Bancshares, we note that Washington Bancshares, that it has 41.7 per cent of the I.P.C. demand deposits in the Spokane metropolitan area. We note that the Seattle-First has 32.4 per cent, and that Washington Trust Bank has 18.7 per cent and the top three hold 92.8 per cent of the I.P.C. demand deposits in the stipulated relevant market.

You can see the rapid fall-off in the market held by the three remaining firms in the market and together they would have in the vicinity of 7.3 per cent, so this would be the primary evidence demonstrating this in the Spokane metropolitan area as measured by the I.P.C. deposits and it is a highly concentrated market.

[68] Q In your opinion is the Washignton Trust Bank among the leading firms of the Spokane metropolitan area?

A I would think so, it is one of the leading banks in the area.

Q Why is that?

A Its size would indicate, its size would indicate that.

THE COURT: Counsel, from time to time things come to mind that I want to ask about before I forget about it, and I notice that it shows here that the National Bank of Washington, the chart shows 2.4 per cent total demand deposits. Do you consider that much of a factor in the area?

THE WITNESS: On the basis of that alone it would not appear to be much of a factor.

THE COURT: Then the next question to you would be: Do you know how they got into the Spokane area?

THE WITNESS: By acquisition.

THE COURT: Of what?

THE WITNESS: That I can't recall offhand, sir.

THE COURT: Well, they are not much of a competitive factor. Do you know what they acquired in order to get in over there?

MR. TORRE: Excuse me, I would direct your attention to Government's Exhibit No. A-44, and—

THE WITNESS: The Pacific National Bank acquired the [69] Spokane National Bank in 1964 and at that time they had total deposits of five million dollars.

THE COURT: In the Spokane area—

THE WITNESS: Yes.

THE COURT: In your opinion they are not much of a factor in that?

THE WITNESS: Well, when I was there—

THE COURT: (Continuing) As of now?

THE WITNESS: Well, your Honor, when I was there and talked with one of the bankers he explained to me that it appeared that Pacific National Bank was having some problems, and this would indicate that.

THE COURT: Now, suppose the N B of C acquired, as the government urges here, acquired a very small bank or started a small one, would they suffer the same thing that Pacific National Bank has as far as being competitive, being a competitive bank in the area?

THE WITNESS: It is chancey. It is a lot easier to go in and purchase an acquisition paying your strong premium with 18%.

THE COURT: Well, supposing the NBC acquired, as the government urges, some smaller institution or started a branch over there, started a branch of their own, would you think they would suffer the same fate as the [70] Pacific National Bank after the acquisition of a five million dollar bank?

THE WITNESS: I would think that N B of C is a larger bank to begin with, that they would probably

be able to avoid some of the mistakes that the Pacific National Bank apparently made. I do not know.

[71] THE COURT: Well, the Pacific National Bank and the merger between the National Bank of Washington or the National Bank of Seattle, that was the third largest in the state?

THE WITNESS: Third largest in the state.

THE COURT: Now do you know Mr. Franklin of the Pacific National Bank?

THE WITNESS: No, I do not.

THE COURT: Or Mr. Chase?

THE WITNESS: No.

THE COURT: The National Bank of Washington?

THE WITNESS: No.

THE COURT: So you wouldn't know that they are really experienced bankers?

THE WITNESS: I do not know.

THE COURT: That's all I have to say, go ahead.

MR. TORRE: For the record, we might just refer to Government's Exhibit, the one that is marked for identification as A-2 and that shows that the Pacific National Bank had assets as of December 31st, 1971 of $755,000,000 and the National Bank of Commerce had assets of 1.8 billion.

You mentioned the term—concentration ratio, what is the concentration ratio?

[72] THE WITNESS: The concentration ratio is the percentage, in this particular case it would be the percentage of I.P.C. demand deposits accounted for by the top three and the concentration ratio here then would be for the top three would be as well as we noted, excuse me, as we noted, about 93 percent.

Q What is it generally, generally speaking, what is the concentration ratio, that is in broad terms?

A It is the measure that's sometimes used as the measure of the market power. It is used as a proxy measure for the structural characteristics of the industry and the significance of this goes to the capacity of the market to control decisions made by business, the more concentrated the market, the more options, and the firms, the banks, would appear to have a more concentrated market.

This is to facilitate their selecting those options that are most favorable to them and they thus would be able to coordinate their decisions somewhat better.

Q What do economists mean by the term—competition?

A Competition is, I would submit, a technical term. In essence competition is entry. To put it another way entry is the cutting edge of competition so this is basically what competition is. I could give an example of it, of the way in which entry functions as competition. [73] You have an industry. The existing firms in industry are highly profitable and this is a signal for entry to occur. New firms enter. And as new firms enter, supply goes up. And as the supply goes up, prices fall. And as the prices fall profits are reduced. Entry will continue then, increasing supply and forcing down prices, until the prices reach a level where entry will no longer occur. At that point, then competition will have run its course as long as entry is free. So, in this sense, it is that entry is really the essence of competition.

Q How does concentration affect competition?

A Competition will run its course provided there are no barriers to entry. Now if there are barriers to entry so that something precludes firms from entering, entry does not drive profits down to the competitive level. One of these barriers can be a scale requirement in relation to the size of the market.

As long as there are these barriers and barriers continue to exist then entry will not be able to go all the way. You can wind up with a concentrated industry. For example, the barriers as mentioned in the scale requirement might be such that there are only four firms in the industry or four banks in any geographic area—what happens then— [74] would you have only four firms—you have a concentration among these particular firms such that they will be able to agree amongst themselves more conveniently to take advantage of whatever the barriers allow.

[75] Q If the economy scale provides for only one firm in a market, does that mean that a market is not concentrated?

A No, it still could be concentrated, it could still be a monopoly.

Q. Would that apply seriatum?

A It could apply to others, yes.

Q Therefore, a banking market, if it could only hold seven banks, it still would be a concentrated market?

A Still be a concentrated market, right.

Q What does the term "rivalry" mean as opposed to "competition"?

A As a result of competition you have entry. When you have freedom of entry of a large number of firms into a market, one result of the large number of firms in the market is that they are independent of one another. For example, corn farmers, their barriers to entry are very low, the scale requirements are very low relative to the size of the market and as a result you literally have thousands and hundreds of thousands of corn farmers. They do not really pay much attention to what the other one does. They cannot influence the price. If one man plants 60 acres and the other one can plant what he wants to, and if he goes to 90, well, it does not have any effect upon the one who plants only the 60 acres, and they produce [76] against the price created outside of their own control and this means that they act independently of one another. And they are. In other words, so if the competitive market is free, then they have their independent decision, they are their own independent decision makers. And, on the other hand where you have the barriers and where you have the concentration under these particular circumstances, then you have two results. One is what one firm does affects what the others will do, and both know that there is conjectural interdependence and they cease to become independent and they become interdependent.

The other thing is that they recognize one another as the source of this. So what concentration really is, it converts competition into rivalry, it converts independent action into interdependent action.

Q How does competition—I should say how does concentration affect competition in banks?

A Banking is a concentrated industry and conse-

quently they are rivals and in a technical sense they are not competitors, they are rivals, one of another. Rivalry creates uncertainty and instability in relationships because when you make a decision and you know it is going to affect other ones, then you don't know for sure [77] how they are going to react. There is an uncertainty and it is desirable to find ways to reduce that uncertainty and that instability. There is a premium on reducing that uncertainty and that instability. There are various ways by which this can be done.

Now F. M. Scherer in his encylopedic book of industrial organizations called Industry, Structure and Market Performance, notes that one of the ways by which they try to overcome this uncertainty and instability associated with rivalry is by the development of a rather elaborate social structure in which members of the industry participate, for example, in trade associations, and in other ways, by which they meet and they provide a sort of a—well, it provides a sort of a communications network.

MR. HARTMAN: Your Honor, I am going to object to this, relying on this Mr. Scherer's volume, as being hearsay and I would object.

MR. TORRE: Your Honor, I would state that I feel it is perfectly permissible for an expert to testify as he is doing and this has been recognized by the Supreme Court and in the new proposed rules of evidence.

THE COURT: Well, I will overrule the objection. You can continue to tell us concerning what Mr. Scherer said, you have already done it and I have heard it and [78] I can't unring it. Go ahead.

I think in your answer you stated that Mr. Sherer said that, for example, bankers have organizations such as clearing houses and that type of thing, and they get together and see each other on occasions and decide that the other fellow is not too bad at all, not too bad a fellow and that lessens rivalry. Is that the idea? All right.

MR. TORRE: In your preparation for your testimony in this case and in analyzing the effects of the merger you read the deposition of Robert F. Buck, the

Executive Vice-President of the National Bank of Commerce?

THE WITNESS: Yes, sir.

Q (By Mr. Torre) I would like to direct your attention to a portion of his deposition beginning on page 57, line 1—excuse me, page 53, line 1, and continuing through page 57.

Mr. Bailiff?

A I believe the relevant pages would be from page 54 to page 57.

MR. MOEN: Your Honor, if he is going to use these depositions we will have to get copies of them, if he is going to continue to refer to many of them we'll go and get them.

[79] THE COURT: How far do you want me to go in here?

MR. TORRE: Page 57, your Honor.

MR. MOEN: I wonder if I could look at one of the depositions to see what this is.

THE COURT: Well, I can tell you, Counsel. This covers conversations that occurred somewhere, conversations between some man from the N B of C and somebody from the Seattle-First concerning raising rates, I suppose, on loans. Is that what you're talking about?

MR. TORRE: Certificate of deposits, your Honor.

THE COURT: Time deposits—whether or not they were going to increase their rate of interest on that and pay on time certificates?

MR. TORRE: That's right, your Honor.

THE COURT: And I take it at this point that the point that they want to make is that Seattle-First, if they were going to raise, then N B of C would raise, or something like that, is the idea?

MR. TORRE: Well, I was going to ask Dr. Smith as to what he thought was the significance of that statement in those pages of the deposition, what those were.

THE WITNESS: On page 54, at the very beginning he refers to something that Peoples Bank did really to [80] increase their rate on some savings. And the gentleman from Sea-First called the gentleman from N B of C and told him about that and said that he didn't know

whether they could stand still for that much longer without reacting to that particular increase. It was then developed subsequently that they did have occasion to be—well, to meet socially at the Association meeting and at this particular time they did talk concerning rates, concerning their business, and on page 57 is an illustration of one kind of statement that might be a subject of discussion, they said, "When are you guys going to drop your savings rate instead of making it up for us?" So I would say this would indicate that there is this rather elaborate social structure which enables bankers to discuss their rates and to discuss their business problems with one another.

Q (By Mr. Torre) Would this be an example of what Professor Scherer was talking about?

A Definitely an example of what Mr. Scherer had in mind at the time as to the type of social structure where there is a reinforcement.

THE COURT: It sounds like a group of lawyers who get together and talk about their minimum Bar schedule.

THE WITNESS: There is one difference, lawyers [81] are exempt from the antitrust law.

THE COURT: Well, you talk about a group talking together about an example, you are talking about an example, doctors and so forth, talking about salaries and size of classes and so forth.

MR. TORRE: I think we had better correct that. Lawyers are not exempt from the antitrust law. Administratively, at least they may have been but—maybe the Department of Justice lawyers—well—

THE COURT: (Interposing) Well, the next question.

Q (By Mr. Torre) Are social relationships significant in the banking industry?

A I would imagine it is significant in two ways. One would be that it is a good way of getting business, and that is important, that is an important aspect of it, but also a way then by which they can coordinate their programs and their policies.

Q Now, directing your attention to Government's Ex-

hibit marked Government's Exhibit B for identification.

THE COURT: What part do you want to refer to, Counsel?

MR. TORRE: I want you to examine these documents again—I will ask you if you examined these documents in preparation for this case?

[82] THE WITNESS: I did.

Q (By Mr. Torre) And I direct your attention to Government's Exhibit No. B-1 marked for identification. What is the significance of this document "Credit Memorandum" subject of the Security Bank of Lynnwood, Washington, and it was written by R.F.B.,—Robert F. Buck, senior vice-president of the National Bank of Commerce?

A Well, there are two points that seem to be made in this: One is in the 4th paragraph in which it is indicated by Mr. Howells that he liked the competitive approach of the N B of C, which was the approach of the friendly competitor, and that he told the president of the Everett Trust & Savings Bank that it was all right for him to come into a particular area as long as he competed friendly like to N B of C. That was apparently what he meant—

MR. MOEN: Objected to as being hearsay, your Honor, and move that the answer be stricken.

THE COURT: Well—

MR. TORRE: (Interposing) We are not testifying as to the truth of the content of the document. That was what was in the files of the National Bank of Commerce, and shows part of his duties as an officer in the regular course of business there. It is an admission by a party to this action.

[83] THE COURT: Well, just a minute now. An admission? Those are strong words. For example, in a criminal case, but in this case what probative value is there in this, what is it proving to me as far as your case is concerned, what is it?

MR. TORRE: Well, it is an example, your Honor, of what Dr. Smith is talking about, banking being a rivalrous industry.

THE COURT: Well, in what respect now? Can you

point that out? Can you point out in that document just where?

MR. TORRE: Well, we point that out in the 4th paragraph where Dr. Smith has pointed to, that he said that he wanted the National Bank, he welcomed the National Bank coming into the area. "Let's be friends, don't come in too strongly, let's be friends, let's get along, let's not be rivals."

THE COURT: Well, it doesn't say—

MR. TORRE: Well, I will direct your attention to the 7th paragraph, the final sentence (indicating). This is the final sentence, your Honor, where "He indicated, however, he was not interested in competing either on rate or on service charges."

THE COURT: Competing with whom?

MR. TORRE: National Bank of Commerce, your Honor.

[84] THE COURT: All right.

MR. TORRE: That's hearsay, your Honor, but there is an exception to the hearsay rule.

THE COURT: I understand, I just wondered about the probative value. All right, I'll make up my mind how much it's worth. Go ahead, next question.

Q (By Mr. Torre) Directing your attention to Government's Exhibit marked for identification B-2, that's a three-page exhibit, the subject matter thereof is the Othello, Washington area.

THE COURT: Incidentally, might I ask you a question, are there any other banks that are opposing this merger?

MR. TORRE: Your Honor, I have no way of knowing that. The Comptroller of the Currency had what was called a hearing, there was, however, no public notice of the hearing and no banks were invited to participate, so they weren't given an opportunity to object.

MR. HARTMAN: That's not true, your Honor.

MR. MOEN: I object to that.

THE COURT: Let me ask you, are there other banks opposing this?

MR. HARTMAN: None to my knowledge.

MR. TORRE: I direct your Honor's attention

[85] MR. MOEN: None to the defendants' knowledge.

MR. TORRE: I direct your attention to Government's Exhibit F for identification, F-1 in particular, this was written by the present president of the National Bank of Commerce, and it discusses the meeting that they had with the Comptroller of the Currency, and it says that in their opinion it would be unnecessary to send any more letters to the banks and they do not intend to publish notice of the hearing. So there was no public notice given of this hearing.

MR. HARTMAN: You just read it, "any more letters to the banks," that advises that there were letters sent to the banks inviting them to that hearing.

MR. TORRE: Let the document speak for itself, and if you read the second paragraph—

MR. MOEN: This is another example, your Honor, of the hearsay upon hearsay upon hearsay. He is talking about two or three people here to prove what the Comptroller did.

THE COURT: All right, go ahead.

MR. TORRE: I direct your attention again to the paragraph second from the bottom beginning with "We do not wish—".

THE COURT: All right, go ahead.

MR. TORRE: Government Exhibit marked F for [86] identification contains a whole line of documents which indicate that the hearing was not a true public hearing; that opportunity was not granted to the general public or to banking customers or to all banks available to participate and that the hearing was held not at the instigation of the Comptroller but at the request of the National Bank of Commerce.

MR. MOEN: I object to these assumptions, there is utterly no evidence in the record to prove anything like that and it is contrary to this action.

THE COURT: He should put in his evidence. He is not under oath, counsel, so he is not testifying, I am accepting his testimony. Go ahead.

MR. TORRE: I understand that, but the document speaks for itself. I am trying to indicate—

THE COURT: I have read it and I will draw my conclusions as to what it says.

MR. TORRE: I want to draw your attention to the fact there are other documents contained in this grouping that are also relating to this, not merely the top one.

THE COURT: All right, go ahead.

Q (By Mr. Torre) Directing your attention to that memorandum, it was written by an individual whose initials are A.A.H., a gentleman named A. A. Hoer, who [87] is—I am told it is pronounced hair, and he was vice president of the bank at the time.

Q (By Mr. Torre) I direct your attention to the third page and the third paragraph on that page, Mr. Smith. What does the narrative in that paragraph indicate to you with regard to competition and rivalry?

THE COURT: Start the paragraph so it will direct my attention to it.

MR. TORRE: There are three pages to the document, your Honor,—four, I'm sorry, and I am talking about the third page, the third paragraph begins, "I called Mister—"

THE COURT: All right.

MR. TORRE: Would you like time to read it?

(Brief pause.)

THE COURT: Go ahead.

A This indicates to me that an arrangement had been made that whoever applied first would, in the event that the two banks made an application, whoever applied first would get it, the other would automatically withdraw, which was a type of an arrangement which they had amongst themselves—between themselves going to a very important aspect of competition, namely, entry.

Q And what function—

[88] THE COURT: And where were they going on this application? That is very important.

THE WITNESS: Yes, on the first page.

THE COURT: Into Othello?

THE WITNESS: Yes. There was some confusion, there's some confusion, there is an application of the Seattle-First branch at Othello, Washington and there was some confusion there because apparently there was another bank that had got there first.

THE COURT: In other words, there is another application that had been made for a branch at Othello?

THE WITNESS: Right.

THE COURT: A branch bank at Othello and then when N B of C, according to this, you say that when N B of C found Seattle-First had already applied, they decided they wouldn't compete for the right to have a branch bank there, is that right?

MR. TORRE: Its more than that.

THE COURT: It certainly wouldn't want two banks in Othello.

MR. TORRE: That's correct.

THE COURT: I don't think so.

THE WITNESS: I don't really—I think the application had been made to the Supervisor by another bank, not by Sea-First.

[89] THE COURT: Do you mean for a state bank?

THE WITNESS: Yes, an application had been made for a state bank there, and then they were making an application also for—then N B of C was making one for a national bank. But the comment made back here on page 3 was just in the discussion, it occurred in the discussion. It came out of the other factual situation.

So in this particular case you did not have applications by Sea-First and N B of C. They were just commenting here the way in which they reacted when they did make dual application.

THE COURT: For a branch?

THE WITNESS: That's right.

MR. TORRE: Again a lack of competition.

THE COURT: No, but this is an application to get into Spokane, I mean Seattle-First is sure in there, true, they want to compete first, but they didn't want to in Othello. But they didn't want to compete with Seattle-First or with somebody else in Othello, isn't that about the size of it?

MR. TORRE: Your Honor, this is an example of the competitive environment in banking.

THE COURT: I understand what your contentions are.

Go ahead and ask the next question.

[90] MR. TORRE: That is the purpose of this document, your Honor.

THE COURT: I understand. Go ahead.

Q (By Mr. Torre) Directing your attention to Government's Exhibit B-3, the following document, it is a document authored by Mr. Hoer, again directing your attention to the entire document but particularly to the third and fourth paragraphs thereof, what is the significance of that behavior and what is that an example of?

A The relevant paragraph and—the third paragraph—and the relevant sentence would be the last one, and it refers primarily to the nature of the relationship called cooperation between branch bank systems, that the rivalry was much stronger between—from a unit bank than from a branch bank, and the next paragraph spells that out in terms of the conduct of this unit bank.

MR. MOEN: May it be understood the defendants have a continuing objection to all this type of testimony?

THE COURT: Yes, I understand that.

THE WITNESS: The overall point to be made from this is that in concentrated industries, there are more opportunities for this type of coordination, [91] for this type of cooperation. This is especially true when banks tend to—or firms tend to have rather common interests, and these can be developed and facilitated through this social structure to which we referred. It's a real communication, a real information system which is one prime condition for the existence of an adequate coordination system. One of the most significant ways by which you can break up or disturb this friendly competition is to introduce in some way a diversity of interest in the parties.

I would submit that Exhibit B-3 kind of gives an example of the function of the diversity of interests. Here reference is made to branch bank systems. They operate in one way. The unit bank with a different set of interests will operate in a different way vis-a-vis the branch bank. So it becomes quite important, in a highly concentrated industry where you have competition that tends to be friendly in nature, to introduce and to maintain, when-

ever you can, a diversity of interest, and I submit that B-3 goes to that point.

Q For the record, the initials M. C. in the document refer to Maxwell Carlson who was the president at the time of the National Bank of [92] Commerce—and the initials A. W. W. therein refer to, I believe, Andrew Witherspoon, who was chairman of the Board of Washington Bancshares, which is the parent corporation of the Old National Bank.

I direct your attention to Government's Exhibit marked F, subsection F-31 for identification, the initials M.C. appear at the left of the document, which stand for Maxwell Carlson, who was the president of the National Bank of Commerce at the time. What is the significance of the activity and the transactions that are set forth in this document?

A In the third paragraph of that Exhibit F-31 it indicates that the attempt to acquire the bank in Newport was in effect going to be cleared with W.T.B.

Again we find the situation of entry, this time by acquisition, being cleared with banks that had a potential interest in the area that would be affected by that acquisition. Again it goes to the rather well developed communication system that appears to exist among the banks where they have this similarity of interests. This is done in an attempt to reduce the rivalry to which reference was made, and one of the things that you try to do in a highly concentrated industry where these friendly [93] relations exist is to introduce and to maintain, wherever possible, a diversity of interest because that would be in the public interest.

Q In your opinion, is commercial banking in the Spokane metropolitan area competitive?

A From a technical standpoint I would not say that it is competitive. It is highly concentrated and there is a strong probability that it is characterized by this friendly competition to which reference has already been made.

THE COURT: Do I understand you to say that most of the heads of these banks are pretty friendly to each other, is that the idea?

THE WITNESS: That's right.

THE COURT: You have never lived in Tacoma?

THE WITNESS: I have never lived in Tacoma.

THE COURT: You don't know the presidents of a couple of the banks here?

THE WITNESS: No, I don't.

THE COURT: I don't want to mention any names, but—

THE WITNESS: What I am referring to here, your Honor, is not so much a friendliness on a personal basis but—

THE COURT: I'm talking about any basis.

[94] THE WITNESS: Okay.

THE COURT: Personal or otherwise right in this city.

Q (By Mr. Torre) You wanted to clarify personal friendliness?

A The major point I was referring to when I was referring to a friendly competition, I'm not referring to it as friendly on a personal basis, although this may well be a part of it, but friendly in terms that there is sort of a set of rules, and it's all right to compete within the set of rules. This is what I essentially mean, and to make it more concrete in the instant case, I would say that the relevance of the attempt to prevent the acquisition is to increase the probability that, if N B of C comes into the Spokane market, it will come in de novo, that is through sponsorship or it will come in by means of a foothold acquisition. By so doing it will come in with a different set of interests than it would coming in with 18 per cent of the market as a result of the significant acquisition of W.T.B. For a period of time one could expect that there would be an increase in independent rivalry as N B of C attempted to expand its foothold acquisition and to increase the competitive importance, the importance of its [95] de novo entry or its foothold acquisition. This is the way in which I would relate what we have been attempting to do here to the instant case.

MR TORRE: Your Honor, I don't know your hours, but if there is a break or an end of the day coming at this time, it would be a perfect time to break and continue tomorrow.

THE COURT: Well, although this is a bank case, I don't enjoy bankers' hours. Generally we go here until at least 4:30, counsel, and, of course, I was late getting here today, and that is all the more reason why I think that we should continue for awhile.

I will, however, take a brief recess now if you wish, just a couple of minutes, so you can talk to your witness.

MR. TORRE: No, your Honor, it is not necessary, I just thought I would ask.

THE COURT: We are going to go until at least 4:30.

Q (By Mr. Torre) Turning to the second factor you mentioned that was relevant in determining the effect of potential competition or the loss thereof in evaluating geographic market extension acquisition, that is, the existence of significant potential [96] entrants outside the relevant market, what is a potential entrant?

A A potential entrant is one who has the capability to enter and has the economic muscle that will enable it to make that entry something significant.

Q How do you identify what firms are potential entrants in any relevant market?

A There are two ways by which a potential entrant can be identified, one is by the application of what is commonly called subjective criteria, the other by objective criteria.

Subjective criteria usually consists of the testimony of those who are involved in the acquisition as to whether or not they ever intended to enter. I personally am somewhat skeptical as to the worth of these particular statements. They seem to be self-serving. It is very difficult these days to get any testimony of people that are making acquisitions if you won't allow us to make acquisition, and it is even more difficult to get any documents.

THE COURT: What he is doing now is really giving an opinion as to how a judge should evaluate testimony, and, of course, I probably need help in this area, but I don't think that that is the appropriate testimony.

[97] MR. TORRE: Your Honor, I think that—

MR. MOEN: That is up to the Court to make that decision.

Q (By Mr. Torre) Do economists in evaluating and determining the effects of the loss of potential competition in a relevant market need to determine who the potential entrants of that market are?

A Right, and in determining that we tend to stress the objective criteria as opposed to the subjective criteria, and the objective criteria to which we look are: Are they in the same, for example, product market, namely, commercial banking.

We ask whether or not the potential entrant is capable. We ask whether or not they have visibility. We ask whether or not they have incentive. And we take sometimes a look at their past expansion record. And on the basis then of these objective criteria we try to make some assessment as to who a potential entrant is. And these are the types of objective criteria that are commonly employed.

Q Why do you prefer objective criteria as opposed to subjective criteria?

A Objective criteria tend to be independently verifiable. You can look at the figures.

[98] Q When is a potential entrant a significant potential entrant?

A He is significant when he has the size and the muscle to make his entry a significant factor in the marketplace.

Q What do you mean when you say significant factor in the marketplace?

A One that would, for example, be able to reduce the concentration in the market. In other words, to be able to deconcentrate the market, this would be one.

Q Applying the objective criteria that you mentioned earlier, are there any significant potential entrants in connection with the metropolitan Spokane banking market?

A There are two that one could identify, one would be the National Bank of Commerce and the other would be the Pacific National Bank, and applying the objective criteria to the National Bank of Commerce—

Q I am sorry, do you mean Peoples National Bank?

A What did I say?

Q You said Pacific.

A I meant Peoples; Pacific, of course, is already in.

Applying the objective criteria in the case of N B of C, it certainly has the capability. It's the second largest bank in the state. It has the [99] incentive. It has been—it has wanted to be in the Spokane area for some time. It could use regional headquarters operating out of Spokane. In the depositions there was expressed interest in certain correspondent banking in the area and to the east, so there is incentive and there is capability.

Q How does N B of C rank among the banks that are not in the Spokane metropolitan area banking market?

A How does it rank?

Q Yes.

A I was just giving, first of all why N B of C would be a potential entrant, and the same analysis could more or less be applied to Peoples, although, to a somewhat lesser extent.

The third one you would have to look at, you would have to drop down to the Puget Sound—

Q I am asking about the banks that are not in that market, where does the National Bank of Commerce stand in size?

A Okay.

Q I direct your attention—excuse me, I would like you in answering that, you can refer, if you will, to Government Exhibit A-2 marked for identification.

A The National Bank of Commerce, according to A-2, is the second largest bank in the state, and it would be [100] the most significant potential entrant into the Spokane metropolitan area.

Q Are there any other significant potential entrants?

A I would think that Peoples National Bank of Washington might be considered a significant potential entrant because of its size and its base, but Puget Sound, which would be the next one, could be considered. All the others are already there. Puget Sound would probably not be considered as a significant potential entrant.

So it seems that in attempting to identify significant potential entrants into the Spokane metropolitan area, it would be limited to two, National Bank of Commerce and Peoples. And of these, National Bank of Commerce would be the more significant.

Q Why not Puget Sound?

A Puget Sound for possibly two reasons. One, it has a more restricted geographic base, and, number two, it is about one-half the size of Peoples in terms of deposits.

Q What does its size have to do with it?

A Size has to go to the significance.

It has to have the ranking, the assets, and it has to have the competitive muscle in general to successfully deconcentrate the industry, to become an important factor.

[101] Q What is the competitive significance of a significant potential entrant to a concentrated market?

A It is the primary source of potential competition and it can achieve various things. For example, if the entry is de novo as opposed to foothold acquisition, if the entry is de novo, it is able to increase the number of independent units in that particular relevant market. It is able to deconcentrate that particular relevant market. It provides another potential expander in that particular relevant market. And when it comes in small, like this, it brings in the diversity of interests which we noted before, given the highly concentrated nature of the market and the characteristics of the rivalry in that particular market.

The introduction of this diversity of interest would appear to be a significant pro-competitive factor. So the significance of the significant potential entrant in the event of de novo entry is that it can achieve these four pro-competitive effects.

Q What are the pro-competitive effects of a foothold entry?

A When you have a foothold entry, you do not have really the additional bank in the area, so this would eliminate two. But you would still have two important [102] pro-competitive effects remaining. And the first of these is that you would be able to increase the probability of deconcentration, and secondly, you would be able to once again introduce this diversity of interest, which tends to be important.

So these would be the pro-competitive effects associated with entry.

Q If the significant potential entrant, in this case the National Bank of Commerce, does not enter the concen-

trated market, in this case Spokane metropolitan area, does it have any significant pro-competitive effect on the behavior of the bank in the market?

A The significant potential entrant offers really two alternate pro-competitive effects. One results if it enters. This is the direct impact of potential competition. It is probably the stronger of the two and results when the potential entrant comes in de novo or by means of a foothold acquisition. We have just discussed the pro-competitive effects from those two types.

There is an alternate pro-competitive effect. Even if the potential entrant does not enter, it still exerts a pro-competitive force. This is sometimes called the wings effect.

Q What is meant by the term "wings effect"?

[103] THE COURT: I think I understand that, unless you want to put it in the record so somebody who reads it later on that may not understand it would know what you are talking about. It means waiting in the wings, is that the idea?

MR. TORRE: Yes, your Honor.

THE COURT: All right, I think I understand that. But you can go ahead and put it in, but you are waiting in the wings and keeping the other people running scared, is that the idea?

MR. TORRE: That's the idea.

THE COURT: All right, go ahead.

Q (By Mr. Torre) Why does the term "in the wings" keep people running scared? What wings influence does it exert on the firms in a concentrated market?

A Well, if they do not perform adequately in the market, the firm may enter—in the case of banking, be allowed to enter. And what they fear then is the direct effect of that entry. We have already covered this in terms of diversity of interest, capacity to deconcentrate, and additional potential expander.

Q From your knowledge of economic literature and history of economic thought, is the wings effect and theory of potential competition a novel one unique to the Antitrust Division of the Department of Justice?

[104] A There is little doubt that the doctrine of potential competition is quite controversial, and the most

controversial aspect of it is the wings effect. However, it has a rather venerable history.

You can find references as far back as 1907 when John Bates Clark, the great American economic theorist described potential competition in his book, The Essentials of Economic Theory. He even italicized the phrase "potential competition" and referred to it as an important pro-competitive force that was capable of curbing conduct in the monopoly markets.

It is well established and entrenched in the literature of industrial organizations. It sometimes goes under another name, called limit pricing,—the idea being you price to keep the potential entrant out.

So it is well established in the economic literature. It does go back to 1907 at any rate, and it has been recognized by the Supreme Court in cases involving—

THE COURT: Let's be specific here, Counsel. Let me ask something so that I can—

MR. TORRE: I was going to get specific, your Honor.

[105] THE COURT: I would like to ask a question. Seattle-First is in the Spokane market as is the Old National, and I understand that Old National is in Seattle. Are you telling me that the Seattle-First in Spokane and the Old National in Spokane are running scared because they feel that if they don't operate real competitively, the N B of C might come in? Is that what you are telling me?

I'm talking about specifically in this instance.

MR. TORRE: Are you directing the question to me or to the expert?

THE COURT: To him. In this particular case that is what I am interested in.

[106] THE WITNESS: Could we use that exhibit now because this one particular exhibit indicates that the presence of N B of C on either side of Spokane, in Deer Park or Medical Lake outside, that this seems to be having some effect upon the conduct of the banks in Spokane.

THE COURT: Then my next question is, with the head office in Seattle, the Seattle-First head office in Seattle, is the policy in Spokane of the Seattle-First the same as it is in Seattle? Do they operate the same with the head office in Seattle?

THE WITNESS: I would think under normal conditions they would operate the same. When you get to where they begin to sort of encroach onto the area, like they are now, like they were before this particular acquisition, then you might local—you might get local variations, and it might not involve, really, Seattle-First but might involve Old Washington.

THE COURT: Let's stay with Seattle-First, do you think that the threat of N B of C coming into Spokane in any way changes the policies of the Seattle-First in Seattle?

THE WITNESS: No.

THE COURT: And the policies of the Seattle-First in Spokane are the same policies of the Seattle- [107] First in Seattle, then, of course, the answer as to whether N B of C is going to change Seattle-First in Spokane is pretty obvious.

THE WITNESS: But it might have an effect on the policy of some of the other banks in the area.

THE COURT: All right. Old National?

THE WITNESS: Yes.

THE COURT: All right.

Q (By Mr. Torre) I direct your attention to Government's Exhibit marked D-4. Is this the exhibit that you were referring to a moment ago?

A No.

Q Then I refer you again—

A We are talking about the competitive restrictions. I know where it is, I already have it here.

Q B-4, I beg your pardon.

A Yes, that's the one, B-4. It is the 4th paragraph. This indicates that there is some thought that the activities of N B of C was encountering competitive resistance from Old National Bank and Washington Trust as a result of their activities in that particular area.

They note, for example, there is some evidence of stronger competition and an inclination to cut rates, which would indicate that they were feeling somewhat the pressure, and this would be some indication of the effect— [108] of the wings effect.

Q For the record, the term "S & E Boys" I believe means Spokane and Eastern, which is—

THE COURT: I sit over in Spokane, too.

MR. TORRE: For the record, your Honor,—

THE COURT: Isn't this an Eastern Washington case—or is it Western Washington?

MR. TORRE: A Western Washington case.

THE COURT: I had forgotten. All right.

Q (By Mr. Torre) Dr. Smith, I direct your attention to Government's Exhibit C marked for identification—

THE COURT: Did you want me to read this last paragraph down here?

MR. TORRE: If you would like to.

THE COURT: In this B-4. That is what you wanted me to read?

THE WITNESS: The second to the last.

MR. TORRE: It is the 4th paragraph, "After visiting in Spokane this past week end, it appears to me"—your Honor, that paragraph.

THE COURT: I read that one, but I also read that last one. Did you read that last one?

What he says is, "Phil has taken an aggressive position as the bank's new president and Fred remarked he was pleased to note his positive stand in conducting [109] the loan meetings. During my visit with Phil, he indicated their bank is going to be more aggressive in every way to bring in new business accounts with the intention to offer the lowest service charges of any bank in town and to cut loan rates below the other banks. It is his feeling operating as a smaller independent bank they can do this with less cost than one of the larger banking institutions such as Seattle-First, Old National or ourselves."

THE WITNESS: May I call your Honor's attention to the first paragraph on the top of the next page?

THE COURT: All right. Go ahead.

Q (By Mr. Torre) What is the significance of the final paragraph on that page?

THE COURT: Apparently that fellow, whoever said that, hasn't been going to any of these banking meetings. Go ahead.

THE WITNESS: It indicated that if there was the

—the last paragraph indicates that there was some concern that if this was—if they encounter competitive resistance, they may have to reconsider their approach to the Spokane area.

Q (By Mr. Torre) Now, I would like to direct your attention to Government Exhibit C for identification. Did you have an opportunity to read this document in [110] your preparation of this case? It is a letter written by the Old National Bank—I mean Washington Trust Bank to the State Supervisor of Banking protesting the charter application?

A Yes.

Q To oppose the charter application of the American Commercial Bank?

A Right.

Q What conclusions do you draw and what is the significance of this document with regard to potential competition and elimination of the effects thereof?

A This document indicated that there was an awareness on the part of W.T.B. that sponsorship was possible; there was an awareness on the part of W.T.B.1 that a foothold acquisition was possible, and there was some concern that a large bank, more than likely a significant potential entrant, would utilize American Commercial Bank as a vehicle for entering Spokane. And this would seem to me to be the three primary points of significance from this deposition.

Q Document?

A Document, excuse me, yes.

Q In your opinion what would be the competitive effect in the Spokane metropolitan area of the loss of N B of C via this merger as the more significant of only two [111] significant potential entrants?

A You would lose the two alternative pro-competitive effects of a potential competitor, and this would be the primary anti-competitive effect of this particular acquisition.

You would lose the capacity to deconcentrate, you would lose the additional potential expander, you would lose the diversified interests, you would lose the additional important decision maker in the area, and in addition

to that, you would lose whatever procompetitive force is derived from the wings effect. So these would be, I believe, the primary anticompetitive consequences of this particular acquisition.

Q In your opinion is the loss of N B of C a substantial lessening of potential competition, not in the legal sense but in the economic sense?

A I would think so, given the size, the interest, and the capability of N B of C. It is—it is the more significant of the two significant potential entrants.

If it comes in by the acquisition, there would then be only Peoples, and the Peoples is less than half the size.

THE COURT: Are you going to a new document? If you are, why, it is now 4:30 and it may be an appropriate time to take the recess until tomorrow [112] morning.

MR. TORRE: Yes, your Honor, I think that may be a good time.

THE COURT: All right. And this witness will be on for some time tomorrow, will he?

MR. TORRE: I don't anticipate maybe more than half an hour.

THE COURT: All right. Of course, cross-examination. The reason I asked you that is because I would like to be sure that your witnesses are here on both sides so we can expedite any disposition of the case.

All right.

MR. TORRE: Your Honor, just to make one point, we do have a witness coming from Alaska who is not going to get here until Thursday morning, Mr. McMurray.

THE COURT: All right. You will have witnesses to take up the slack, will you?

MR. TORRE: We only have two more witnesses, then Mr. McMurray.

THE COURT: All right.

MR. HARTMAN: Your Honor, I have a purely mechanical problem, I would like to raise at this time the question as to what your Honor's practice is as far [113] as sitting on Fridays, is that your regular motion day?

THE COURT: I have my criminal docket and motion calendar on that day, but we can take care of that in the morning and just go right ahead and try this case in the afternoon because I would like to expedite disposition of it.

All right, the Court will be at recess until 9:30. The reason I am recessing until 9:30 instead of 9:00 is that these people are coming over from Seattle, the weather is real bad, the roads are slick, and this will give them some extra time.

(At 4:32 p.m. the Court recessed for the day.)

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[114] REPORTERS' CERTIFICATE

We, W. L. Mayrand, Gerald G. Popelka, and Paul C. Tveten, official court reporters for the United States District Court, for the Western District of Washington, do hereby certify that the annexed and foregoing is a full, true, and correct transcript of proceedings had in the above-entitled and numbered cause, on the date herein before set forth, and we do further certify that the same has been prepared by us, or under our direction.

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[115] UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

No. 237-71C2

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE, ET AL, DEFENDANTS

[Filed in the United States District Court, Western District of Washington, Jun. 22, 1973. Edgar Scofield, Clerk. By M., Deputy]

TRANSCRIPT OF PROCEEDINGS held in the above-entitled and numbered cause in the above-entitled Court before the Honorable WILLIAM N. GOODWIN, United States District Judge, on Tuesday, January 9, 1973, at the United States Courthouse, Tacoma, Washington.

VOLUME II

[116] APPEARANCES

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JON HARTMAN and
THOMAS McLACHLEN, appearing for and on behalf of Intervenor.

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[117] PROCEEDINGS

THE COURT: All right, Mr. Torre.

ROBERT EDWARD SMITH

Resumed the stand and testified further as follows:

DIRECT EXAMINATION (Cont'd.)

BY MR. TORRE:

Q Referring to Government's Exhibit D marked for identification, Dr. Smith, I refer you to the exhibit marked D-1, which is the Washington Trust Bank report of stockholders, January 27, 1972. The initial paragraph of that document on the first page. In light of what you told us yesterday with regard to the effect of potential competition and the wings effect, what significance do you attach to the statement contained therein?

A In the definition of a potential entrant, one of the objective criteria was the existence of incentives, and Exhibit D-1 goes to substantiate that criterion of incentives.

Q Directing your attention to Exhibit D-2 marked for identification, what significance do you attach to that document, particularly the final paragraph?

A Again, this goes to the issue of incentives, with specific reference to the last sentence.

[118] THE COURT: Well, let's get right down to it. You know, I have to read this and listen at the same time.

MR. TORRE: Well, I was referring, your Honor, to the document which discusses the mortgage loan business in Spokane.

THE COURT: Going back to this first one, D-1, we

didn't go into that in enough length. Just what part of D-1 relates to in the wings; that is what you asked, isn't it?

MR. TORRE: Yes.

Q (By Mr. Torre) Dr. Smith, could you be more specific as to what part of that demonstrates that there is incentive, as you say?

A It is not that these exhibits go to the wings effect, the demonstration of the wings effect, these exhibits go to the demonstration of incentive.

THE COURT: Well, I mean incentive. I misspoke myself. I remember you said incentives.

A (Continuing) The second paragraph goes to gains which have been achieved during the five years of healthy growth from 1965 to 1970, and this refers to the general good business conditions and the growth in Spokane.

THE COURT: Oh, I see. What do you think of [119] that paragraph after the preview of 1972, that first paragraph?

THE WITNESS: These are speaking primarily to the national economy, rather than the local Spokane economy. The first paragraph in Exhibit D-1 refers primarily to what is happening at the national level, speaking in terms of the real growth for the year, prices will be up 48%, and a 4.8 per cent increase in unemployment.

THE COURT: I understand. Unemployment is up, according to this?

THE WITNESS: That is right.

THE COURT: And the forecast is for it to be up.

THE WITNESS: Will be much above the forecast.

THE COURT: All right, now go to the next one.

Q (By Mr. Torre) Yes, D-2.

THE COURT: I have here D-22.

Q (By Mr. Torre) D-2, which is a document dated March 17, 1972—

THE COURT: No, this is labeled D-22.

MR. TORRE: It is mislabeled, your Honor.

THE COURT: All right, I know which one it is, in any event. Go ahead.

Q (By Mr. Torre) Referring to the last paragraph,

the [120] last few sentences of that paragraph, Dr. Smith, what significance do you attach to that?

A Exhibit D-2 indicates the difficulty of financing a mortgage company operating in Spokane Valley, from Seattle, and hence the desire to get into the Spokane area to handle that market.

Q Referring to Exhibit D-3, the second paragraph thereof, the internal memorandum of the National Bank of Commerce, and the part I am referring to is labeled FAA, and the gentleman is Frank A. Abersfeller, an officer of the National Bank of Commerce, what significance do you attach to this second paragraph on that page?

A It again shows the possibility of opening a new line of business headquartered in Spokane, and correspondent bank relationships in Montana.

THE COURT: Well, you are talking about paragraph number 2?

MR. TORRE: Yes, the potential of acquiring new correspondent bank relationships, that paragraph, your Honor.

THE COURT: I see.

Q (By Mr. Torre) Now, directing your attention to Exhibit D-4, paragraph 2 thereof, what significance do you attach to the statement contained therein; again, it is a memorandum written by a Senior Vice-President of [121] the National Bank of Commerce.

A The second item being discussed, this refers to the ability to follow Seattle customers when they move to Spokane, and servicing them when they arrive in Spokane.

Q Exhibit D-5, I direct your attention to specifically the second paragraph thereof, the first part of the second paragraph. What significance do you attach to that?

A The second paragraph of Exhibit D-5, in terms of incentive, is the opportunity that a location in Spokane would offer to engage in the international field, international banking, to service those who engage in international trade.

Q Do you feel that would offer them an incentive to enter that field, in offering that service?

A That is right.

THE COURT: Really, there is no question but what the bank wants to get into Spokane, is there?

MR. TORRE: Well, I think the final exhibit, D-6, will bring that home.

THE COURT: Well, if they didn't have the incentive, we are certainly wasting our time. That is why we are here, I guess, because they want to get there.

MR. TORRE: Well, I didn't know your state of mind, your Honor.

[122] THE COURT: Well, I don't think you have to prove that to me, Mr. Torre, because I guess they want to get in there badly enough that they are contesting this lawsuit.

MR. TORRE: Well, just for the purposes of clarity, since D-6 is a lengthy one, it is the Annual Report of the Marine Bancorporation and the National Bank of Commerce for 1970, and the purpose of introduction primarily is to direct your attention to the letter by Andrew Price, the president of Marine Bancorporation to its stockholders, and the last paragraph of that exhibit.

[123] THE COURT: Tell me that again.

MR. TORRE: I direct your attention, your Honor, to paragraph four on the page of—it's not a numbered page, I'm sorry, right at the first page after the table of contents or after the table of contents and the letter of the President of Marine Bancorporation which says —and this is in the fourth paragraph now mentions the long sought goals of representation in the City of Spokane.

THE COURT: Oh, all right, I see that, it is at the bottom of that page, the Marine Bancorporation letter of the president?

MR. MOEN: That page is missing from our copy, your Honor.

THE COURT: It mentions the bank within the city and long sought representations and they personally have no office, tells how far Spokane was from Seattle—280 miles.

MR. MOEN: Yes.

THE COURT: (Continues) And the approval of the agreement between the two institutions and tells about

the operating offices of the bank over there in Spokane, the operating offices or staff of the Washington Trust Bank over in Spokane.

MR. TORRE: Yes, your Honor.

[124] THE COURT: That's the substance of it.

MR. TORRE: And, again since, because of the length of this exhibit, I direct your attention to the page preceding. Well, it would be page 11 of the exhibit, the letter of the president of the National Bank of Commerce, Maxwell Carlson, to the stockholders and the further—

THE COURT: (Interposes) Page 11?

MR. TORRE: Yes, that is not a numbered page, I'm sorry.

THE COURT: Which paragraph do you want to refer to?

MR. TORRE: Part of that letter at page 14 in the left-hand column at the top beginning with the bold-faced type—Washington Trust Bank—page 14, that is.

THE COURT: Yes.

MR. TORRE: Again, just to demonstrate the importance of getting into the Spokane area.

THE COURT: Mm-hmm.

MR. TORRE: And characterizes the Washington Trust Bank as one of the leading banks in Spokane.

THE COURT: Mm-hmm.

MR. TORRE: And—

THE COURT: —all right, is there anything [125] more with reference to that?

MR. TORRE: No. Now, Dr. Smith, are there any other anti-competitive consequences of the proposed merger in your opinion?

THE WITNESS: I see two additional anti-competitive consequences. The first arises out of the Buck deposition, one of the documents that we noted yesterday and these suggest the possible existence of a friendly relationship between Seattle-First and the National Bank of Commerce in connection with the rates and applications by allowing this acquisition—

THE COURT: (Interposes) Before going any further you use the word possible, I don't want that, you

know what possible means in law, don't you—we've got to have something more definite. It's got to be probable, not just possible.

THE WITNESS: I would say then—probable, your Honor, on the basis of the Buck deposition and the documents that were produced yesterday. The acquisition of the W.T.B. by N B of C would allow the relationship btween N B of C and Seattle-First to be transferred to the Spokane area. If, on the other hand—

THE COURT: (Interposes) Now, I didn't quite [126] catch that, that assumes something that is not in evidence yet. That assumes that there was a friendly relationship between them in Seattle, you stated.

MR. TORRE: Well, when you say that there was a friendly relationship that existed in Seattle, what is the basis for that statement?

THE WITNESS: The basis of that opinion was number one, in the Buck deposition where the telephone call was received by an official of the N B of C from the officer of the Seattle-First checking their rates and informing the officials of the N B of C of the possible need to change the interest rates on savings certificates which was changed by Peoples; and—

MR. TORRE: —and what else did that deposition or that part of the deposition indicate in regard to social relationships?

THE WITNESS: It indicated that there was rather active contact between the officials of these banks and as a result of that it provided an information system, a communication system in which they did discuss rates and other aspects of their business.

Then the other document indicated that when Seattle-First and the N B of C made application for a branch the bank that made the later application would withdraw it.

[127] MR. MOEN: Could he identify the last instrument he is talking about?

MR. TORRE: We're referring to No. B-2, page three, Exhibit No. B-2.

THE COURT: I looked at that one, and I can't remember—let's see, give me that—

MR. TORRE: Yes, B-2, your Honor, the Othello memorandum, Othello, Washington.

THE COURT: That's the one where I got into the act by commenting that they wouldn't need two banks in Othello, that's the one you're referring to, we talked about that yesterday?

MR. TORRE: That document there—

THE COURT: —all right.

MR. TORRE: (Continues) In light of your comment about extending the relationship which exists in Seattle, what was the significance of Government Exhibit No. A-67, A-67 marked for identification?

THE WITNESS: Exhibit A-67 indicates a concentration of total deposits in Seattle indicating that it is a concentrated market and hence the type of market in which these types of relationships can readily develop.

MR. TORRE: I direct your attention to Government's Exhibit No. A-70 and A-71, what is the significance of those exhibits in your opinion?

[128] THE WITNESS: The significance of Exhibits A-70 and A-71 once again is to indicate the extent of the concentration in the city areas, the urban areas in this case, the Tri-City areas and Yakima metropolitan area.

THE COURT: Yakima?

MR. TORRE: On Exhibits A-70 and 71 we are referring to.

[129] Q (By Mr. Torre) I direct your attention to the—

THE COURT: Let me see the significance of that about Yakima, tell me that again. What is the significance of that? Is this the concentration and demand deposits in the hands of a few?

THE WITNESS: That's right.

MR. TORRE: Yes, your Honor.

THE WITNESS: This, as was indicated in Seattle, the significance—

THE COURT: That's about all the Bank of Yakima can stand, isn't it? You have got four, of course, not counting Union Gap, but—

MR. TORRE: Your Honor, I don't know—

THE COURT: You don't know how big Yakima is?

MR. TORRE: I have never been to Yakima to be honest with you.

THE COURT: I have been in Yakima, and in terms of population and trading center and so forth, I don't see how Yakima can stand more than that unless you want to go broke, but if somebody wanted to go there and go under, I guess that's all right. But this is pretty well distributed among all the banks.

Here's the way I look at it, the Bank of Yakima has 18%, that is a state bank, the N B of C has 31%, Seattle-First has 25% plus there is the Union Gap, which [130] makes them 28%, and then Pacific National Bank of Washington has 20%. I don't see any significance of that at all.

MR. TORRE: What he was trying to say, the point he was making was that it is the same banks again, the top two banks are the National Bank of Commerce and the Seattle-First National Bank.

THE COURT: I mean what is the significance? That is the thing I want to know about the distribution of the demand deposits, what amounted to demand deposits in the Yakima area, I just don't get it. I want to be sure I understand what he says.

THE WITNESS: Exhibit A-71 indicates that Yakima is a concentrated market. It is not my point that it should be less concentrated than it is.

THE COURT: What do you mean, concentrated? Maybe I don't understand what concentrated means.

THE WITNESS: If we were to take the top three banks, this would indicate that the top three banks held approximately 78% of the demand deposits in the Yakima metropolitan area.

THE COURT: There are four though, aren't there?

THE WITNESS: That's right.

THE COURT: The Bank of Yakima only has 18, [131] but that's a pretty sizable chunk of the total business, isn't it?

THE WITNESS: That is true. The significance of this goes to the proposition that a concentrated market increases the probability that the banks in that market

will be able to establish some type of a friendly relationship amongst themselves.

One of the most significant ways by which this friendly relationship can be disturbed is that if entry is to come into it, it should come into it with a diversity of interest.

THE COURT: This friendly relationship that you are talking about, I don't quite understand that. Do you mean that people have to be mad at each other in order to engage in a competitive effort in the community?

THE WITNESS: No, friendly here is not referring to a personal relationship. Here it is referring to the communication between the banks as to the rates they charge, the adopting of a cooperative attitude towards applications.

We noted yesterday, for example, that Sea-First contacted N B of C in connection with rates. We noted yesterday that Sea-First and N B of C had a working relationship relative to applications. The second one that applied for the same area would withdraw. When [132] N B of C thought of going into Newport, they checked it with the W T B, a bank in the area. This is what is meant by friendly relationships.

Another way of speaking about friendly relationships, we noted that competition among branch banking was less vigorous than rivalry between a branch bank and a unit bank. This was likewise demonstrated—

THE COURT: All right.

THE WITNESS: This is what I mean by a friendly relationship. It doesn't have anything to do with their personal relationships. For the most part, I assume these are the most congenial.

THE COURT: How do you relate that to the efforts of these banks to try and go out and get new business and take other people's accounts, which they do?

THE WITNESS: This is right.

THE COURT: How do you arrive at that?

THE WITNESS: They are rivals with one another, but I submit they are rivals within a set of rules, that they refer to one another as a friendly competitor, which means that they compete with one another. They rival, they are rivals with one another within a set of rules.

There are things that aren't to be done and there are things that can be done. This is what I mean by a friendly relationship.

[133] THE COURT: All right.

Q (By Mr. Torre) Does the fact that Yakima can only accommodate four banking organizations mean that it is not a concentrated market?

A It is a concentrated market and it is quite possible that it couldn't accommodate more banks than it has at the present time. We have seen, however, that Sea-First, and N B of C meet one another in Yakima. They meet one another in the Tri-City area, they meet one another in Seattle. If they acquired W T B, they will meet one another in Spokane. If they have a working relationship, for example, in Seattle, this then can be extended elsewhere.

The more opportunities they have of meeting one another, the greater the advantage to them of working out some sort of a relationship and sticking with it. This is especially true when they come in with approximately equal market shares or at least market shares that commit them to sort of the stability of relationships.

Q Must this working relationship be necessarily conspiratorial?

A It need not be conspiratorial. I noted yesterday that a rivalrous relationship tends to create instability and uncertainty in a market, that is, there is a real [134] premium on trying to reduce these uncertainties. It is quite common for some sort of an accommodation to be worked out.

In the banking industry, one method of working this out seems to be through their social structure. This leads then to rivalry within an accepted pattern or code.

MR. TORRE: You look as though you were about to ask a question.

THE COURT: I am not going to ask him a question, I am just trying to follow him.

MR. TORRE: I didn't mean to interrupt.

THE COURT: I am perplexed, it is just because I don't completely follow it, this rivalry business as contrasted to—frankly, when counsel says it means that

they operate under a certain set of rules, rules just about govern all our activities, business, court, lawayers, groceries, et cetera. You have some sort of an integrity, if you want to call it that, as far as business is concerned.

Like Judge Boldt once said in a trial that I had in front of him in a Miller Act case, he said there is even integrity in business, and so I think that he told me that and the other counsel in the Miller Act case.

[135] I just don't understand how competing businesses can operate without some sort of set of rules.

[136] MR. TORRE: I think Dr. Smith might be able to clarify that.

THE COURT: I wish he would. Let me understand it. What do you mean, rules?

Q (By Mr. Torre) For example, how would competing firms rather than rivalrous firms deal with each other or deal with the problems of branching as opposed to what Exhibit B showed yesterday was the case between the Seattle-First and the National Bank of Commerce?

THE COURT: Let me make a comment first before you answer that question, this record reflects that when the N B of C makes the first application, why, Seattle-First, for example, doesn't want to go in and try to make a competing application in a community that can only stand one, we will say, branch or one bank, Othello.

For the record, I know where Othello is, I got kicked off the railroad when I was coming back from Washington State when I didn't have money enough to pay for my fare to get back to town, so I know where it is. But it has changed since then, and it isn't very large.

Now, in connection with the application for a branch over there, it is understandable why two banks of that character wouldn't want to go in there and fight [137] with each other over who should have a branch in a community like Othello. I can understand that without any great agreement or any great conspiracy because who would care. That's my reaction to that, whether N B of C or Seattle-First got in there. But certainly it couldn't stand two. I don't think, anyhow, it's just a trading center of limited area for a lot of beet growers

and that's the farmers, alfalfa, hay, that kind of stuff. That's the thing that bothers me.

MR. TORRE: Just for the record, your Honor, there are two banks at the present time.

THE COURT: That's what I say, but I doubt that they are—

MR. TORRE: Perhaps Dr. Smith can answer my question.

THE COURT: Go ahead.

THE WITNESS: Answering your Honor's question first, I would think the appropriate thing to do would be to let the regulatory agency decide which bank should be allowed to go in. It would have two competing applications and then it could make the decision as to which bank would be better able to serve the community. So this to me would be the primary significance of the attitude towards application.

Your question then was what—would you please [138] repeat it?

Q (By Mr. Torre) How would rivalrous versus competing firms have reacted in that situation? Is it the distinction between independent versus interdependent decision-making?

A I would think independent banks would have said to the regulatory agency, you decide which bank is to come in.

Also answering your question, your Honor, as to what are some of the rules that might be observed here, and one of the documents yesterday, reference was made to the competition, the rivalry that comes when a unit bank is in an area, and it was noted that the unit bank was more aggressive and that one of the branch banks in the area felt that it would have been better off had there been another branch bank in that area rather than a unit bank.

MR. MOEN: Could I ask the witness to identify the document?

MR. TORRE: I believe it is Government's Exhibit B-3.

THE COURT: All right. I remember the reference he had made.

Q (By Mr. Torre) Now, in this connection, there are a number of sub-exhibits in Government Exhibit A marked for identification, namely, sub-exhibit A-1 through [139] A-25. Without going into each individual exhibit, what significance are those exhibits to the comments we have made thus far with regard to concentration?

A Exhibits A-1 through A-25 indicate the pervasive characteristic of concentration of banking in the State of Washington whether you do it by regions, state-wide, or by county. Concentration in commercial banking is evident.

In addition, these exhibits show the change in concentration over time. The significance of these exhibits is found in the fact that when state-wide concentration is high, a few major banks meet one another in concentrated local markets. Consequently, if there is a working relationship among them, it is easy for them to extend that relationship from one part of the state to another. In addition, it is valuable to them to maintain that relationship when it is so pervasive across the state.

[140] Q Directing your attention to Government's Exhibit marked for identification A-31, 32 and 33, what significance do you attach to those exhibits?

A Exhibits A-31 through 33 show a share of deposits of the two largest banking organizations, namely, Seattle-First and National Bank of Commerce, by county, and it shows that they meet in twenty-five of the thirty-nine counties in the state, so their points of contact are pretty extensively distributed. Incidentally, I am not contending that each county is a market.

THE COURT: Now, I have one question. They meet in how many?

THE WITNESS: Twenty-five out of the thirty-nine counties.

THE COURT: Assume for the sake of my question, that there was only one in that particular county, do you think that the other one coming into the county is anti- or pro-competitive, so that there are two of them?

THE WITNESS: I would think that it would be possibly pro-competitive.

THE COURT: Well, you say possibly, I mean is it pro-competitive or anti-competitive?

THE WITNESS: It would depend upon the way in which they came in. If they came in by acquiring an existing bank that was an important element in the [141] community, or in the county, then I would say anti-competitive. If they came in de novo, then I would say that it would be pro-competitive. In addition, we have another exhibit here which indicates the amount of deposits in the various counties.

MR. TORRE: For the record, that is Exhibit A-26 through A-29.

A (Continuing) And these exhibits indicate that out of the fourteen counties in which both banks do not exist together, only one of them is really of any tremendous economic significance, the other thirteen counties have relatively low percentages of the total deposits of the state. The one county in which both banks do not co-exist, that is a very important county, is Pierce County.

THE COURT: Well, up until 1969, neither of them were in here, isn't that true?

Q (By Mr. Torre) Well, in this connection, would the points of contact that you are mentioning, did you have an opportunity to read a portion of the deposition of Mr. Robert Faragher, President of the National Bank of Commerce? That is between pages 26, line 10 to page 32, line 15?

A Yes, I did.

Q What significance do you attach to the statements [142] that were made by Mr. Faragher during that period of examination?

A To summarize those pages, it would seem to say three things, number one, that a large branch bank like the National Bank of Commerce could adjust to local competitive conditions, so that in the event a local situation developed where there was a change in service charges, such as that, it would be possible for the National Bank of Commerce to make a local adjustment. Secondly, these pages indicate that there was a possibility that a feedback could occur, namely, that if they had to change the service charge in one local bank, one local area, this might require them to change the service charge in another, but that feedback would seem to be

only a factor in the consideration. Thirdly, they preferred to operate as a unit.

Q What significance does this have to the affect of potential competition in the market?

A It would indicate that de novo entry, or foothold acquisition, by introducing a diversity of interest, could bring about a change in that relevant market.

Q You said that there were two additional anti-competitive effects that you felt the proposed merger would have, what was the second?

A We have noted that N B of C is not in Tacoma, and that [143] N B of C is only marginally in Everett. If this acquisition were to be allowed, it would appear to be an invitation for N B of C to move by acquisition into Tacoma, and possibly into Everett, hence, increasing state-wide concentration and allowing all of the major banks to meet in the major economic areas of the state. Not only would it be an invitation to N B of C, but also to the other potential entrants to do likewise.

Q If this occurred, would there be the same interest or a diversity of interest in these markets?

A It would bring the same interest into the major markets in the State of Oregon.

THE COURT: You mean the State of Washington.

THE WITNESS: Excuse me, I mean the State of Washington.

THE COURT: Now, do I understand him to say that if you let them into Spokane, they are going to get into Tacoma and Everett too? Is that the gist of that?

THE WITNESS: No, it is not that they are automatically going in, but it would seem to me that it would extend an invitation to them. The reason I say that is that the theory upon which this acquisition is allowed, if applied in Tacoma, would probably lead to a justification of any acquisition that might be made. You would have to have a relation worked out between the [144] acquired bank and N B of C. The inability to do that could prevent—

THE COURT: Well, they may not want to come into Tacoma though. The president of the National Bank of Commerce has already been a banker in Tacoma, and he

may not want to come back. So you don't know about that, do you?

MR. TORRE: Well, your Honor, it is agreed that the National Bank of Commerce does want to enter the City of Tacoma, and does want to enter the City of Everett. That is in the pretrial order.

MR. MOEN: I am going to object to that, your Honor. I think that the pretrial order says they had long sought.

MR. TORRE: Well, whatever the language is.

THE COURT: All right.

[145] MR. TORRE: Could you describe the kind of competition as you have defined it that is acceptable and the kind of competition that is unacceptable among the firms in concentrated markets?

THE WITNESS: From a policy standpoint one of the major goals is to keep interests diversified. In order to avoid the uncertainty and instability associated with rivalry, the firms naturally seek some sort of accommodation and by its nature this accommodation would be the accommodation most favorable to their interest. The goal of regulatory policy should be whenever possible to introduce some diversity of interests. For a period of time, independent action has a good chance to occur. In the course of time, that independent action once again will revert to interdependent action. Consequently, while it's a transitory policy, given the existence of a concentratd industry, it's the best that we have short of direct regulation of conduct. I assume, at least in my opinion, I would like to avoid as much as possible direct regulation of conduct.

For this reason I place great stress upon the desirability of structural remedies which in this case take the form of introducing diversity of interests by requiring the significant entrants to come in de novo [146] or come in by a foothold acquisition.

MR. TORRE: At this time, your Honor, I would like to move into evidence Government's Exhibits marked for identification as A-1 through 25, A-30 to 33, A-34, A-56, A-67, A-70 and 71—A-26 and 29—26 through 29. Government's Exhibit No. B marked for identification; subsection B-1 through 4 and—

THE COURT: (Interposes) Haven't we gone through this before?

MR. TORRE: Well, I was moving for their admission, your Honor.

THE COURT: I see. All right.

MR. TORRE: Government's Exhibit No. C marked for identification, Government's Exhibit No. D—subnumber D-1 through D-6, Government's Exhibit No. F-1 and F-31.

THE COURT: Let me ask you about those, are you moving for admission of the particular identifications or that those particular portions of identification that you referred to in your interrogation of the witness?

MR. TORRE: Particularly yes, your Honor. I don't want to be held—there may be some sentences there—

THE COURT: —well, I understand that, but [147] so far as the particular portions that were referred to and with which I am familiar, at least I hope I am, that is what I'll rule on, just the portions, not the whole documents with all the things in it that may or may not have any bearing—all right, Mr. Johnston, I'll hear you on this now. I guess this is a critical time.

MR. TORRE: Also, I would like to move for the admission of the portion of the depositions of Robert Buck and T. Robert Faragher.

THE COURT: I have read part of Mr. Faragher's testimony in his deposition and that related what they would do if the bank in Yakima decided to offer free checking accounts.

MR. TORRE: That's a hypothetical situation, your Honor.

THE COURT: I understand that, that you kept on going but that was the primary thing as to what they would do.

MR. TORRE: Well, I used that as an example, your Honor.

THE COURT: I understand that and I want to be sure that I understand what you're covering.

MR. TORRE: Well, I'm sorry.

THE COURT: Well, don't be sorry. That's just [148] what I got out of what Mr. Faragher said in sub-

stance, that is as far as the changing of policy of the bank with regard to offering free checking accounts and it was just one bank as contrasted to the whole system. They'd have to take a good look at that and decide what they would do after they found out what the policy was and all the other factors.

MR. TORRE: Right, and how it would respond to the local situation, I think.

THE COURT: That's what I wanted to know, just exactly what I was supposed to gather from it and I read it, I tried to read it while you were referring to something, I read four or five pages and I tried to listen to it at the same time. Now, Mr. Johnston, with regard to this offer?

MR. JOHNSTON: With regard to this offer I would like to discuss various points in it because I think the offer in part is valid and in part is not valid. I'd like to suggest a possible further qualification of the point, your Honor, or points, your Honor, already indicated—

THE COURT: —well, let's see if I can anticipate what you are going to say—there would be some reference to thirdhand hearsay and you don't think that should be in?

[149] MR. JOHNSTON: It certainly should not be admitted and certain portions for the purposes of the truth of the facts of the matters stated and how those things happen to affect this witness and whether or not that sort of thing is a basis for the opinions that he gave.

THE COURT: Counsel, while he's talking, you might as well sit down.

MR. JOHNSTON: (Continues) Well, I think your Honor hit my point on that very well and that is with reference to these documents. Now, there has been no foundation whatever with reference to these documents and to the extent these limited portions are offered simply for the purpose of eliciting what this witness' opinions would be.

THE COURT: Well, based on that, if that be the truth—

MR. JOHNSTON: Yes, I don't think we would object to, but we do object, however, to the admission for the pur-

pose that your Honor just outlined and that is proof of the truth of the statements that were made and also, of course, the witness' interpretation of these statements. In other words, the witness has, in effect, I think, testified, that on the basis apparently of the truth of some of these third-party [150] statements certain facts exist which I don't believe the witness testified, any of which, were within his personal knowledge and certainly he has suggested that the banks in this state have these arrangements, and he has drawn that all from these exhibits and except to the extent that these exhibits reflect statements of the personnel of the defendants here, there is no basis for drawing those conclusions unless the witness has personal knowledge of the banking situation in this state.

THE COURT: Well, you're talking about him saying that there is a kind of a rivalry but they operate as a social group and they're not mad at each other and they do try to compete under that sort of thing?

MR. JOHNSTON: Well, yes, a lot of the statements along the line, of course, and he has stated that these conditions could exist, he didn't say they did exist. He simply said that they could exist but there are some examples of that in his testimony. But anyway, I think that that part of our objection—does that cover the aspect of it?

THE COURT: I understand what you're saying.

MR. JOHNSTON: Now, as to Mr. Faragher's deposition, I am somewhat at a disadvantage because [151] I don't have even a copy of it. I think the statements the way your Honor described, statements of Mr. Faragher—

THE COURT: Well, I am going to give it whatever weight it's worth with regard to the plaintiff's claim.

MR. JOHNSTON: Right, and how your Honor views its materiality and so on?

THE COURT: Well, we'll just wait.

MR. JOHNSTON: Now, on these exhibits and I have made a note here of what exhibits the witness has discussed—on those, as I recall, the witness was requested to express that—let's see, on my page 13—

THE COURT: Well now, the way we wound up, let's see if I understand, we went through a lot of things

here for almost a day now concerning bank activities and what might happen. The way we wound up was based on what he had read of these depositions and the things that were called to his attention by counsel he expressed an opinion that it would be, as the government contends, a pro-competitive if N B of C went into Spokane area by acquisition of a small bank, maybe a unit bank or by a small national bank or by applying for a charter and hopefully getting one [152] for a national bank in the area because that would bring a new bank into the area as contrasted to the acquisition of a bank that already was a major factor in Spokane.

Now, that's what he said would be adequate, and of course I heard his reasons. Now, that's where we wound up.

MR. JOHNSTON: Yes, your Honor.

THE COURT: So here's my suggestion: He is entitled to express his opinion and as you know we give an instruction in jury cases how to treat experts' opinions and you understand what I'm talking about?

MR. JOHNSTON: Yes, of course.

THE COURT: If you don't think the reasons he is giving are sound, then you can disregard them. If you think they are sound, then you can accept it. Now, in other words, give it the weight you think to which it is entitled. What I am saying is I heard all these reasons and I heard his reasons and I heard on what he based them, so why not just let that go into evidence? Whatever is called to his attention and let's go on with the case.

MR. JOHNSTON: Well, there's one point, if your Honor please, with reference to all of the material we talked about yesterday and portions of what we [153] talked about today. That is the conclusion that we would join in that suggestion. However, these exhibits A are statistical exhibits. In other words, these are exhibits apparently that have been prepared by the Justice Department showing ratios and amounts of deposits and in the counties and in the state and in various other places.

THE COURT: You think it is too broad, is that it?

MR. JOHNSTON: I think, if you will recall, your Honor, that counsel asked this defendant with reference to—

THE COURT: (Interposes) He is not a defendant, I may make a mistake as to who the defendants are sometimes but he is not a defendant so I wouldn't want you to call him a defendant.

MR. JOHNSTON: Well, I'm afraid we'll have to agree with that.

THE COURT: All right, he is a defendant so far as you are concerned, not so far as I am concerned—go ahead.

MR. JOHNSTON: For example, the witness was not asked to identify the statements of these exhibits or identify them in any way.

THE COURT: What way do you think that would [154] hurt?

MR. JOHNSTON: Well, your Honor—

THE COURT: (Continues) What harm do you think that would do?

MR. JOHNSTON: No harm but we would like to renew for the record two objections we made before, Mr. Hartman and I.

THE COURT: Well, your objection is well taken and I think that your objection was well taken but I am going to overrule it because I don't think it does any harm and I think your objection is very well taken and you know what I mean?

MR. JOHNSTON: Yes, your Honor.

THE COURT: First of all, I don't think the statistics regarding—

MR. JOHNSTON: (Interposes) If I may clarify one thing to the extent that we are able to show inaccuracies in these statistical exhibits.

THE COURT: Well, I'll let you do that but as far as statistics, state-wide, I think your objection is probably well taken. I'm going to let it in anyway. So, counsel, you have won, so don't—

[155] MR. VERVEER: If your Honor please, your statement as to the statistics. We would like in effect an opportunity to cure them, or rather—

THE COURT: Well, we'll put the statistics in and the reason for those statistics may or may not have any value of course is one of the problems of trying a case of this

character before a native son of this state is that you, you know, you already know certain things about the size of the community, like Yakima and Othello and those types of things, and I suppose I should just come out of the vacuum and hear all of this but as far as the statistics for the Yakima area—that it is a concentrated market, that there is a concentrated market in the Yakima area, what bearing does that have on the whole picture? In other words, they don't have fifteen banks with five million dollars in deposits; they've got four banks with I don't know how many, how much, but at any rate that's all it shows, doesn't it?

MR. VERVEER: Well, it demonstrates, your Honor, that the banks existed in that area and—

THE COURT: Well, the N B of C is there, Seattle-First. All right; well, I'll admit what Mr. Torre has offered and feel that I will consider it properly in the context of what you are trying to [156] establish or disestablish here because I understand what his opinion is and even if I ruled out some of it you are not going to change his opinion.

MR. JOHNSTON: Just to clarify one thing, your Honor, I understood that your Honor said earlier with reference to the other exhibits, rather, other than the statistical exhibits, the portions you admit or admitted refer to—

THE COURT: Not the whole thing, just those portions reflect what they refer to, that's all right. Are you through interrogating Dr. Smith?

MR. TORRE: Yes, I am, your Honor.

THE COURT: Very well, we will take a couple of minutes recess and then we'll start cross-examination. You are going to conduct that, are you, Mr. Moen?

MR. MOEN: Yes, sir.

(Court recessed at 10:50 a.m.)

[157] (Court reconvened at 11:04 a.m.)

MR. TORRE: Your Honor, before cross-examination begins, there are a number of exhibits in Exhibit A that we did not specifically refer to in the testimony but that are obviously related to the exhibits that were referred to. That would constitute the remainder of the exhibits, actually.

I would like at this time to move the admission of the remainder of the exhibits contained in Government's Exhibit A marked for identification.

THE COURT: Well, the problem is how do you relate the portions that you didn't refer to to the opinion that Dr. Smith gave in view of the fact that you didn't ask him whether he relied on anything other than just what you referred to?

MR. TORRE: Well, your Honor, for example, he referred to the market share data in the Spokane metropolitan area on Government Exhibit A.

THE COURT: This is A?

MR. TORRE: A, yes, A-56. However, A-55, -57, -58, -59, are basically the same exhibits except using different measures—

THE COURT: Criteria?

MR. TORRE: Your Honor, for example, one is commercial industrial loans, another one is share of [158] total loans.

THE COURT: That's what I mean, that's criteria.

MR. TORRE: Yes, the statistics show different areas in which the bank operates as far as the industrial loans and the demand deposits. There are other exhibits that are identical except for time periods, for example, there are some for June 30, 1970 and some for June 30, 1971.

THE COURT: Any objection?

MR. JOHNSTON: None, your Honor.

THE COURT: They will be admitted.

(Government's Exhibit A for identification was received in evidence)

THE COURT: All right, go ahead, Mr. Moen.

CROSS-EXAMINATION

BY MR. MOEN:

Q Dr. Smith, you stated on direct examination yesterday that from a technical standpoint, the Spokane banking market was not competitive, is that correct?

A That's true.

Q And you drew that conclusion from the fact that you believed the Spokane market to be structurally concentrated, is that correct?

A That's true.

[159] Q This morning you said that the City of Yakima was structurally concentrated?

A That's true.

Q Is that correct?

A Yes.

Q And you conclude from that then that there is no competition in Yakima?

A That it would not technically be competitive, that's true.

Q Would that also be true of Seattle?

A That would also be true of Seattle technically.

Q That would be true of every city in the State of Washington?

A That's true, I would imagine, of every city in the State of Washington, that's true.

Q How about the United States?

A That's probably true, too.

Q So there aren't any cities or banking markets from a technical standpoint that are not highly concentrated?

A That's true.

Q Now, is it possible for a banking market to be highly concentrated from the standpoint of structure and also be highly competitive from the standpoint of performance?

A This is possible.

Q And isn't it your ultimate concern then to determine [160] whether or not the market is in fact competitive?

A Competitive in a performance sense.

Q From the standpoint of performance?

A When I said it was possible, it would be possible if there were significant overbanking. When you have a concentrated market, the time when you get competitive performance in a most probable way is when you have overcapacity in that particular industry. Now, if the regulatory agencies would allow banks to come in more freely, then I would think that you would have a chance to get a competitive performance.

THE COURT: That would be kind of tough on the FDIC, wouldn't it? Do you know what I mean by that?

THE WITNESS: Yes, I do.

THE COURT: They would be paying off a lot of depositors for some banks.

THE WITNESS: It all depends on how far you would carry that. You would not carry it so far that it would result in bank failure. Bank failures have historically always resulted in the periods of time when we have significant depressions, like the great depression of 1933, the bank panics earlier than that, 1921. These occurred when we knew less about fiscal policy.

Since World War II we have been able to control [161] the deep depression, we have rolling adjustments, we have mild recessions. So the major cause of bank failures we seem to have put behind us by virtue of our increased knowledge and sophistication relative to monetary and fiscal policy.

Q (By Mr. Moen) What factors do the regulatory agencies, the Comptroller and the State Supervisor of Banking look to when granting an application for a new charter?

A One thing, convenience and need, whether there is a need for it.

Q And what is the purpose of the regulation?

A The historical purpose of the regulation has been to protect the depositor from excessive bank failures.

Q Is it fair to assume then that if there is need for a new bank in a given area, that the charter will be forthcoming?

A Oh, I would presume that to be the case, but if I might add the following, regulation has a lag connected with it. Regulation in connection with some industries like public utilities relate to things such as that the regulatory lag rebounds to the benefit of the public. In the sense that a public utility will make an application for a rate increase because of an increase in costs, the lag in the regulation, that is permission for the rates to increase, the lag will hold the price allowing [162] the cost to press up against it for a period of time hence putting increased demand upon the public utility, increased efficiency.

In the banking industry I would suggest the regulatory lag works the opposite way. The lag involved here prevents or slows down the rate of entry and the rate of entry protects the banks already established in the area. Consequently, the regulatory lag and regulation of entry into the commercial banking business rebounds more to the favor of the established bank than it does to the public.

Regulatory lag therefore operates quite differently in the case of commercial banking than it does in the case of public utilities.

Q Isn't it reasonable to assume that if you have a need for the bank, that the new bank would be forthcoming?

A Eventually this could be the case, yes.

Q And doesn't that offer another area of potential entrance?

A This is another source of a potential entrant, yes.

Q Now, did you make an effort to determine what the degree of competition was in the Spokane market from a performance standpoint?

A No, I did not, not from a performance standpoint.

Q Did you make any effort to determine the degree of competition anywhere in the State of Washington from a [163] performance standpoint?

A No, I did not.

Q Did you visit the City of Spokane?

A That I did.

Q In preparation for this trial?

A That I did.

Q How long were you there?

A It was a brief visit, I spent two nights in Spokane.

Q And what did you do while you were there?

A I spoke to two bankers and I drove around the city primarily to take a look at the branches of Washington Trust Bank.

Q And what did you talk about?

A With the bankers?

Q Yes.

A I talked about the Spokane banking business and I tried to find out what I could about the competitive relationships.

Q Did you visit any other areas in the state?

A I visited no other areas in the state. I have visited them on other occasions, however, Seattle, Bellingham.

Q For the purpose of determining that banking position?

A No, I visited, you know—in response to your question did I visit—have I visited other areas of the state, the answer is yes, but not for the purpose of preparation [164] for this particular case. For the purpose of preparing for this case, I visited one area, Spokane.

Q Do you think a visit of two days to Spokane and talking to two bankers is sufficient to form an opinion with respect to the competitive position of banks in the State of Washington?

A More time would have been desirable. However, my experience has been that competitive relationships, rivalrous relationships tend to be rather similar as between industries from what I have read from study, from what I have gained from conversations, from what I have learned in preparing for this case. I find really very little different about commercial banks than about many aspects of manufacturing even with regard to the preparation of my thesis, which you asked me about yesterday. That is an agricultural commodity, but they also sell finished products, and I found that interviewing them, the same type of problems occur when they are engaged in a rivalrous business.

I want to say there is nothing wrong per se in a rivalrous relationship. Most economic relationships in manufacturing and many in services have to be because they occur in a concentrated industry.

Q Doctor, how would you define a banking market?

A How would I define a banking market?

[165] Q Right.

A I imagine one way would be it all depends upon the purpose for which you are defining the banking market.

Q How do you define it for the purpose of determining whether a merger is competitive or anti-competitive?

A In that particular case, I think that the relative dimensions of consideration should be the entire state.

[166] Q Are you familiar with Dr. Oscar Goodman?

A No, I am not familiar with Dr. Oscar Goodman.

Q What criteria do you use in determining a banking market?

A Again, for the purpose of determining the anti-competitive or pro-competitive effects of an acquisition, is that the purpose?

Q Yes.

A All right, in this particular case, as I mentioned, I would use the entire state.

Q Do you consider the State of Washington as a banking market?

A For this particular reason. Now, we did not say, and I did not testify, to the proposition that the State of Washington was a relevant market such as, you know, the Spokane metropolitan area was stipulated to be a relevant market. I did not testify to that. I identified the exhibits on statewide concentration, point of contact by county, and those exhibits, in order to establish the fact that the dominant banks meet one another in many of these local relevant markets.

Q But the meetings take place in local markets, not in the statewide market, is that correct?

A This is correct.

Q Would that also be true of the Inland Empire?

A Pardon.

[167] Q Would that also be true of the Inland Empire? Or would that also be true of Eastern Washington?

A To a lesser extent. For the primary reason, you don't have as many big cities in the Inland Empire, but I would imagine, I would expect to find that the same sort of accommodation that any two of the major branch banks had worked out would be applied in Chelan—

Q Are we in agreement that Eastern Washington as a unit does not constitute a banking market?

A I didn't testify that it was a relevant market in the same, I presume legal sense is what you are driving at here, as the Spokane metropolitan area, but I would say that it has economic significance, as you know, opposed to the legal requirements.

Q As a trade area now, or as a banking market?

A Well, I would imagine that it is a trade area.

THE COURT: Wait a minute now, you mean all of Eastern Washington is a trade area?

MR. MOEN: That is what I am asking.

A For example, Yakima. I do not know the extent to which Yakima trades, you know in Spokane. I know for example that newspapers, Spokane newspapers, do not reach Yakima in any significant extent.

Q Do you think newspaper circulation is indicative of a banking market?

[168] A Not necessarily significant of a banking market. Again, what do you mean by a banking market, for what purpose? You have to give me the purpose.

Q I am talking about the purpose of the merger.

A I have already said I did not testify to the fact that Eastern Washington was a relevant market in the same sense that the Spokane metropolitan area was a relevant market.

Q Doctor, yesterday you indicated that the National Bank of Commerce might be a more effective competitor in Spokane than the Pacific National Bank, because it was a larger bank and had more resources, is that correct?

A I did say that, but I also said something else. The question that was asked me is how do you explain the performance of Pacific National in the Spokane area. I cannot say that I really know the answer to that, but I did suggest that there were possibly two answers that could be given to it, and one is that very frequently acquisitions involve digestion problems. This one may have had a digestion problem, I don't know. Secondly, it could be that there was a personnel problem. The only thing that I do know for sure is that I was told in my conversations in Spokane that there was a problem in Pacific. I did not ask what it was, because I didn't really expect that I, you know, that it should be [169] answered.

Q Did you know that that bank is owned by Western Bancorporation?

A Yes.

Q Do you know how many assets Western Bancorporation has?

A Yes, not in numbers, but I know they are a powerful bank, yes.

Q Is there any reason to believe that Commerce could do any better, has any more resources than Western Bancorporation?

A You have to look, first of all, and this is the testimony that I gave yesterday, what caused the problem at Pacific. If you can analyze what caused the problem at Pacific, then you are in a position to avoid a repetition of the difficulties. If the problem was difficulty because of indigestion, then it is a matter of making proper adjustments so that that would not occur. If your problem was a personnel problem, then it is a matter of seeing that you have the appropriate personnel. So that in answering the question yesterday I suggested these various things, I admitted that any acquisition is a chancey thing. N B C-W T B is a chancey thing. Some are more chancey than others. One thing that should be recognized is that there is an effective assymmetry of costs and benefits from a social and from [170] a private standpoint in making an acquisition. For an example, entering a market by means of a significant acquisition is very desirable from the standpoint of the acquired and the acquiring firms. For one thing, the acquiring firm doesn't have to worry about becoming established in the market, he comes into the market with 18% or 20%, or something like that, and for that he is willing to pay a rather handsome premium.

Q Isn't that a pro-competitive factor?

A Pardon?

Q Isn't that a pro-competitive factor?

A I do not think so. The reason for it is it is much better from a social standpoint to come in with a diversity of interest, with a different set of interests, because this upsets that relationship, and more particularly, this bears on the other assymetrical aspect that occurs in that acquisition. The costs to the parties are rather low in making an acquisition, they get strong benefits from it. On the other hand, the public, it seems to me, and this is the crux of my testimony, pays a cost for it in terms of a sort of consolidation of the banking interests

in a community, you do not have a diversity of interests coming in.

Q In your opinion is there any portion of this proposed merger which is pro-competitive?

[171] A I have read, for example, in the convenience and needs, that international banking can be offered, that there are certain smaller type loans, which can be offered. These would undoubtedly be beneficial to the community, but the question, if I may finish, the question is can N B of C make them available in Spokane only by acquiring W T B, and I would suggest that they could be made available to the community by means of a foothold acquisition, or by means of sponsorship.

Q And what would you suggest for a foothold situation?

A Probably the most obvious candidate would be American Commercial.

Q Is American Commercial an available candidate for merger?

A Are you speaking of the standpoint of the stockholders' willingness to sell?

Q Are you familiar with the ten year restriction in Washington for merging and selling newly formed state banks?

A Yes, I am, and I could respond to that in two ways. First, there are only two years to run. Entry in Spokane has been a long sought goal. The National Bank of Commerce has been very patient, and two more years is not too long to ask them to wait again. And the second point is that there have been, I believe there are five state banks that were chartered in the 1960s that have [172] been acquired, and that means that none of them waited out the full ten years. Exemptions were granted in the case of five state banks.

Q Are you suggesting that Commerce could form their own bank and get in in a shorter period than the ten year span?

A No, I am not suggesting. You asked me, you know, if there might be a bank available for a foothold, you know, for acquisition, and I did suggest one.

Q American Commercial?

A That is right, American Commercial. And my other point was I did not feel that the ten years restriction was really a very significant element in the case of the National Bank of Commerce acquiring American Commercial. Now are you asking me whether or not I suggest the sponsorship route?

Q My next question is I will ask whether you have any reason to believe that the American Commercial Bank is available at the end of the ten year period?

A No, I do not know. I do not know whether it is available or not. Most things are available at a proper price.

Q Have you any information, if it were available, if Commerce would have a change to buy it?

A No, I have no information on that.

Q Are there any other foothold candidates in Spokane?

[173] A I would say that that, in my estimation, would be the more desirable one. There is one other, and that is Farmers and Merchants Bank.

Q And does Farmers and Merchants Bank have an office downtown?

A No, they do not. That is why I say that American Commercial would be the preferable one.

Q Do you think that the Spokane market can be served by an office from outside the city?

A It could be served better from an office within the city.

Q You testified yesterday as to the significance of certain memoranda with respect to the bank in Othello. Do you have the date of that exhibit?

A Not offhand, I can't recall. I can recall—

Q My notes would indicate that it is 1951, does that sound about right?

A That sounds about right. If I might respond to that, you know, in addition to—it was 1951 or '52, and to me the significance of that date, and that is an old date—

THE COURT: The statute of limitations has run.

A (Continuing) But the point that I would make, we submitted four, I believe it was, documents, pretty

much to the same point, and if you take a look at those, they go by almost five-year intervals from 1951, the latest one I think is 1968, which shows that, to the extent that, you know, this indicates this particular type of [174] accommodation, that it has been a persistent thing, it isn't something new, and I attach significance then to the fact that one of the documents was 1951. That is much better than to have all documents in 1968.

Q Do you remember the dates of the other three documents?

A I am not sure, but I think roughly 1951, 1956, 1962, 1968. I am not exactly sure of that.

Q So you found four documents over the period of seventeen years?

A That is right. And I would consider that much more significant than had we found four documents in 1968.

THE COURT: Let me ask a question now, and I don't want to interrupt your train of thought, but that document, that 1951 document relates to Othello, is that the one that relates to Othello?

MR. MOEN: Yes, your Honor, that is correct.

THE COURT: Then, on the other hand, when there is an application and an eventual acquisition by Seattle-First, that same rule doesn't seem to apply in the larger area, does it, Dr. Smith, the fact that Seattle-First got into Spokane certainly isn't in any way following the old rule, N B of C seems to want to get in there too.

THE WITNESS: In response to your question, your Honor, I would say that the Othello situation [175] involved what you could call simultaneous applications, or competing applications. Where they come in, let's say, within a short period of time, which would present a problem to the regulatory agency to choose between the two applicants. It does not apply to the situation where one applies in 1951 and gets it, and the other one applies in 1955 and gets it. It would apply,—I took the Othello incident to refer to simultaneous or competing application, which would impose upon the regulatory agency a decision to choose between one or the other.

[176] THE COURT: What would that have to do with the competitive effect of both coming into the same market regardless of whether it came in simultaneously or one subsequent to the other? That is what we are talking about here is competition.

THE WITNESS: Right. The way in which I would respond to that question is as follows, if the two banks that made what we can now call simultaneous applications, and they are really independent in their rivalry with one another, they would have both stuck by their application and maybe compelled a decision by the regulatory agency.

THE COURT: Okay, all right, you gave me that answer before.

Q (By Mr. Moen) Doctor, do you feel the Spokane market needs deconcentration?

THE COURT: Now I want to ask one more before you—if one bank in the market and then another bank decides they would like to get into the market too, use N B of C and Seattle-First because that is what we have been talking about, it seems, you wouldn't say that the N B of C wants to get into the same market as the Seattle-First to make it easier for Seattle-First in the market, would you?

THE WITNESS: No, I would not.

[177] THE COURT: If they don't contest over the same—at the same time, it doesn't mean they are not going to be competitive, does it?

THE WITNESS: Eventually. They will go back in and they will try to get back in.

THE COURT: That's right, but I mean when they do try to get in, it is not in there to try to make it easier for the other bank, is it?

THE WITNESS: No, they will within the acceptable means of rivalry, they will try to take accounts away. They will try to develop the business to the extent to which they can. They will—

THE COURT: Now, how do you like that word "competition" when they come in, they intend to compete, don't they? They don't intend to rival one another?

THE WITNESS: I tried to use "competition" in a relatively technical sense.

THE COURT: I understand, but they intended to compete when they come in, they don't intend to rival each other, do they?

THE WITNESS: I would think that if they come in de novo, and you are suggesting right now that they come in de novo—

THE COURT: I mean however they come in, don't they intend to come in and compete rather than rival [178] each other?

THE WITNESS: If they come, for example, by buying—by acquiring a significant bank already in the market, I think their conduct in the market would be quite different than if they were to come in de novo and acquire a branch, and that is relevant to the acquisition here.

THE COURT: All right, I understand. Go ahead.

Q (By Mr. Moen) Doctor, should the Spokane market be deconcentrated in your opinion?

A I would think that further deconcentration would probably be helpful, yes.

Q Do you think the National Bank of Commerce has the capability to deconcentrate if it went into the market today?

A I think the probability of a further deconcentration over time would be good, over time.

Q Wouldn't immediate deconcentration be good?

A Pardon?

Q Wouldn't immediate deconcentration be good?

A I don't exactly know how you could get an immediate deconcentration.

Q Don't you think the National Bank of Commerce has more capability to compete than the Washington Trust Bank?

A It depends upon what you mean by compete. I have already [179] suggested my opinion that if N B of C came in by acquiring W T B, it would behave quite differently than if it came in after the acquisition of American Commercial.

Not only that, but coming in sort of replacing W T B, you would lose the wings effect, and yesterday we noted in the exhibit that there was a wings effect. We noted yesterday that the W T B and Old National, in the opinion of the observer of N B C, were offering competitive resistance to the presence of N B of C on the outskirts of Spokane.

You can almost see, if you will, N B C in the wings of Spokane. It has been stipulated that N B—that the Spokane metropolitan area is the relevant market.

Q In considering the wings theory, aren't you concerned with the threat of entry?

A The threat of entry?

Q Yes.

A This is one aspect of it, yes, the threat of entry.

Q Is there any threat of entry now into Spokane?

A From—

Q Commerce.

A From Commerce. Well, they were certainly feeling it apparently.

Q Do you feel that is a factor in the Spokane banking [180] market?

A Pardon?

Q Do you feel that is a factor in establishing policies or practices in the Spokane banking market?

A From the exhibit we introduced, the N B of C officials apparently did because he said he was—that they were meeting competitive resistance, that there had been an impact upon rates.

They also said as a result of this we may have to reconsider our position relative to Spokane and to bring N B of C in then in the place of W T B, who was one of the parties reacting to this wings effect. It would be to destroy the wings effect.

Q Of course, was that fact the result of Moses Lake and Deer Park being in the market or was it the threat of entry into the market?

A They were not in the market—I mean they had been excluded from the market, you know, by definition.

Q Right.

A Really by geographic location. But they are apparently reaching into the market and having sufficient effect to cause a competitive resistance.

Q Is that a wings effect or is that actually entry into the market?

A However you call it, it is effective, and by [181] stipulation we have said it is a wings effect because we defined it to exclude them. However you call it, it's effective and it will be lost if the acquisition is made, and that's the anti-competitive effect.

Q If Commerce went in by a toehold entry, as you call it, how long would you anticipate it would take before they became a definite factor in the market?

A Let's assume for this purpose they acquire American Commercial—

THE COURT: How long has American Commercial been there?

THE WITNESS: 1965.

MR. MOEN: 1965, I think.

THE COURT: What is their percentage of the deposits now?

THE WITNESS: 2.6, 2.7, it is less than three percent.

If my memory serves me correctly, Mr. Moen, N B of C now has in Spokane in the two outlying banks in the area, in the county, I think it's twelve million dollars in deposits and ten million dollars in loans.

Q (By Mr. Moen) Are you talking about American Commercial?

A No, I'm talking about N B of C.

THE COURT: Where at, Deer Park?

THE WITNESS: Dear Park and Moses Lake— [182] you said Moses Lake, it's Medical Lake.

MR. TORRE: It is stipulated the two branches in Spokane County have eleven million dollar total deposits that the National Bank of Commerce derives from 4.4 million dollars in deposits from the Spokane metropolitan area and 10 million dollars in loans of which three million— of which eight million come from three customers.

THE COURT: All right.

THE WITNESS: I think that makes its loans and deposits greater than American Commercial. So what you do is you add N B of C deposits to American Commercial along with American Commercial's downtown office, and I think it has three branches, and the two branches then in the outlying area, you would have a bank with a downtown headquarters and four or five branches, and this would, it seems to me, be a quite solid beginning.

Q This is on the surmise that American Commercial be acquired?

A That's true, that's true.

Q Because you have no information?

A No, I just have the general supposition that if you pay handsomely enough a premium, you—

THE COURT: Why do you have to pay a handsome [183] premium, do you mean overpay?

THE WITNESS: No, you never overpay, but if you are willing to pay enough, you can probably get American Commercial Bank.

THE COURT: Overpay?

THE WITNESS: I would not advocate overpaying, no, I would not.

THE COURT: All right.

MR. MOEN: May I speak a minute with my co-counsel?

THE COURT: All right.

(Brief pause)

MR. MOEN: I have nothing further, your Honor.

MR. HARTMAN: The intervenor has no questions.

THE COURT: Do you have anything further, Mr. Torre?

MR. TORRE: Just three questions to clarify.

REDIRECT EXAMINATION

BY MR. TORRE:

Q Dr. Smith, could you just differentiate performance analysis and structure analysis for us?

A Performance first; these are the results of the economic activity and they would measure—they would be represented by what is the profitability, what has been their price performance, what is the—how [184] efficient are they, and good performance would mean acceptable levels of profit, acceptable levels of prices, efficiency.

Structure on the other hand refers to the conditions of entry into the industry, refers to the level of concentration.

The dominant structural fact that is available for analysis and use is concentration and the significance is from economic theory, from the theory of industrial organization is that the structural conditions of a market constrain the activities of the firms in the market to insure an acceptable social performance. This is why you can, if you want, measure it from, you know, from the standpoint of concentration or from the standpoint of performance.

The problem with concentrating on performance is that this leads more and more to regulation of conduct, and this is why if you accept the general efficacy and efficiency of a market mechanism, the emphasis is put upon the structure control so as to assure or increase the probability of assuring an adequate social performance.

Q You made the statement that nothing is wrong with the rivalrous market per se, what do you mean by that term?

A I mean some markets by their very nature have to be [185] concentrated. For example—

THE COURT: I think we have gone into that and I have heard it.

Q (By Mr. Torre) You have referred to a digestion problem involving the Pacific National Bank, were you referring to the digestion problem of the merger of the National Bank of Washington with the Pacific National or were you referring to the digestion problem of acquiring the bank they acquired in Spokane?

A The one in Spokane.

THE COURT: The one they acquired over there and when?

THE WITNESS: The Spokane National in '64.

Q (By Mr. Torre) But that was acquired by the National Bank of Washington, which was in turn merged with the Pacific National Bank. That is what I was wondering, which indigestion you were referring to.

THE COURT: There is no evidence that they had any particular problems.

MR. TORRE: He was hypothosizing.

THE COURT: There may be an assumption they might have had poor management.

MR. TORRE: The only thing I was trying to do was clarify which indigestion he was referring to, whether the Spokane National acquisition by the National [186] Bank of Washington or the merger of the National Bank of Washington with Pacific National Bank.

Q (By Mr. Torre) Which one were you referring to?

A Either one could have done it, but more than likely the latter.

MR. TORRE: I have no further questions.

THE COURT: I have one question. You talked about a social or a business relationship between commercial banks, do you take into consideration the relationship between the commercial banks as it may affect their policies in their efforts to acquire deposits as it relates to their competition with, for example, the savings and loan institutions and other institutions that are out in the market after deposits? What about that?

THE WITNESS: You are talking about how broad the network is of these?

THE COURT: All I am talking about, you say they go to cocktail parties and talk about the problems and so forth, but my question is, does their comradeship, if you want to call it that, in your judgment have any relation to their mutual problems in competing with the savings and loans and the United Mutual, as an example here, and other institutions that are reaching for peoples' money?

[187] THE WITNESS: These social relations are multifaceted in terms of their purpose, and I would say that undoubtedly this is a source of conversation and concern. I was focusing upon one result of these. There are many purposes, many results, and I was focusing upon one.

THE COURT: Would it be unusual, in your judgment, for them to discuss something about interest rates, for example, on time deposits?

THE WITNESS: I didn't hear that.

[188] THE COURT: Well, when they meet, for example, at the North Pacific Banking Association convention to discuss interest rates at a cocktail hour, they usually have a social hour before the dinner, you know, that's a common thing, isn't it, to discuss interest rates on their time deposits as relates to interest rates that are paid by savings and loan associations, for example, and the problems that they have in that area?

THE WITNESS: I would not think that that would be unusual, but that concerns me less than their discussing on these occasions their own rates, rates not so much their own rates vis-a-vis other financial institutions, but their own rates.

THE COURT: Isn't that something like these department stores do when they discuss or they have shoppers that go around and see what the other fellows are selling for, to see whether they are competitive?

THE WITNESS: Not exactly.

THE COURT: Well, you always like to know what they are doing; that would be the best way to understand it, isn't it?

THE WITNESS: Right. But the other thing then is this: Is there anything else in this particular relationship, is it just a search for information?

THE COURT: That's the thing I'm getting to now.

[189] THE WITNESS: Yes.

THE COURT: You have testified that there was a conversation in an area and you wouldn't go so far as to say that was the start of an agreement between the banks now that, "We'll do this if you'll do it" insofar as reduction of rates?

THE WITNESS: Well, we do have a statement submitted on one exhibit where one banker stated that "We just don't, we will not compete in terms of service charges," so here was a statement—it stated that "We are not going to compete with you in terms of service charges." I'm not suggesting, you know, that there is—

THE COURT: Well, who said that they wouldn't compete in terms of service charges?

THE WITNESS: Well, we have it there.

THE COURT: Where was that—what you are talking about then is Mr. Faragher's deposition where he said he didn't know if they would offer free checking?

THE WITNESS: No.

MR. TORRE: Mr. Howells, the president of the Lynnwood Security Bank.

THE COURT: Well, what did he say?

MR. TORRE: That—"we are not interested in competing either in rates, for rates or service charges."

[190] THE COURT: Well, Mr. Howells, who was—

MR. TORRE: He was with the Security Bank of Lynnwood, your Honor.

THE COURT: Isn't that a state bank; that means Howells decided he wasn't going to compete or try to give more services, et cetera?

MR. TORRE: It covers the conversation between him and the officers of the National Bank of Commerce, your Honor.

THE COURT: Let me ask what I can get out of this,—

MR. TORRE: No. B-1.

THE COURT: All right, let me see what I can get out of it. This man of N B of C who said Howells told him something.

MR. TORRE: They had a discussion, there was discussion, with Mr. Buck, that was several times. He was senior vice-president of the National Bank of Commerce and this meeting was reported with Mr. Howells, who is the president of the Security Bank of Lynnwood.

THE COURT: Well, what significance do you think I should get about what Howells wasn't interested in, what does that mean to me, or suppose to mean to me, that's what I want to know.

MR. TORRE: That he was not interested in [191] competing; I think the document speaks for itself in that regard, your Honor.

THE COURT: Well, Howells is not interested in competing because he has shown quite a profit from the service charges.

MR. TORRE: Well, that's it exactly, your Honor.

THE COURT: What does that have to do with the N B of C?

MR. TORRE: That's exactly the point, N B of C is not in that market and he would be willing to have them come in if they could get along, and if they could get—well, Mr. Verveer is familiar with the document, your Honor.

MR. VERVEER: Your Honor, if I could try to be helpful, I believe that this document shows that the National Bank of Commerce and the Security Bank of Lynnwood are in the same market. Mr. Buck reported on a statement from Mr. Howells, and we are not contending that Mr. Howells honestly made this statement, we are contending that Mr. Howells—

THE COURT: Well, my question is what am I supposed to conclude from it, if I do conclude that he made it.

MR. VERVEER: I believe your Honor could [192] readily conclude that this is an example of bankers in concentrated markets, and being able to communicate with one another either as explicitly as this document does or perhaps less explicitly, as Professor Smith has tes-

tified, that they don't want to rock the boat—that indicates, your Honor, that you thought that there was an indication that, in this paragraph—

THE COURT: All right, I understand what you think I should conclude. You think that that indicates that there was no boat rocking, and I am satisfied that I understand what you think I should conclude. All right, now, we are finished with this witness and it is now five minutes to 12:00 so this will be an appropriate time to take a recess for lunch and we will come back at 1:30. Court will be in recess.

(Court adjourned for the noon recess)